

COUNTY OF THURSTON HEARING EXAMINER

Special Use Permit Application by Mountain Stone Aggregate to expand an existing aggregate mine from approximately 10.4 acres to approximately 228 acres in size, on property in the Long-Term Forestry (LTF) zone)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
)	Project No. 2020103651, Johnson Creek Quarry Expansion
)	Sequence Nos. 20-109365-ZM, Special Use Permit, and 25-107217-VE, Appeal

SUMMARY OF PROPOSAL AND DECISION

Summary of Proposal: The Applicant proposes to expand the boundary of an existing aggregate mine from 10.4 acres in size to 228 acres in size. The Special Use Permit would allow the excavation of approximately 7,500,000 cubic yards of material in phase one of the expanded mine. Phase one of the expansion includes 42 acres of the 228-acre site and would occur over a period of thirty years. Future phases, beyond the thirty-year period of phase one, would expand the operation to other parts of the 228-acre site. The proposed expansion and operation requires a Special Use Permit in accordance with the standards of the Long-Term Forestry (LTF) zone.

Summary of Decision: The Special Use Permit is approved, subject to conditions. The Applicant’s appeal of the MDNS is granted in part and denied in part. Alexander’s appeal of the MDNS is denied.

FINDINGS OF FACT

1.1 The Applicant is Mountain Stone Aggregate, 30211 SR 507, Roy, Washington, 98580, represented by Mike and Steve Olson. *See Att.*¹ A, p. 2. The agent of the Applicant is R.B. Engineering, P.O. Box 923, Chehalis, Washington, 98532, represented by Robert Balmelli, PE. *See id.* The property owner is Weyerhaeuser Timber Holdings, Inc., 220 Occidental Ave S, Seattle, Washington, 98104-3120. *See id.*

1.2 The Weyerhaeuser property, as relevant here, consists of three tax parcels, i.e. Parcels 11624100000, 21619000000, and 11624410000. *See Att. A*, p. 1; *see also Att. K*, pp. 2-3. Parcel 21619000000 is approximately 609.1 acres. *See Att. D*, p. 2. Parcel 11624410000 is approximately 80 acres. *See id.* Parcel 11624100000 is approximately 553 acres. *See id.* Collectively, the Weyerhaeuser property totals approximately 1,242.1 acres (609.1 + 80 + 553 = 1,242.1).

1.3 The project site is located at 0 Johnson Creek Rd SE, Tenino, Washington, 98589. *See Att. A*, p. 1. The project site is approximately 4.5 miles east of the City of Tenino in unincorporated Thurston County. *See Ex. 14.4a*, p. 3. The current mining operation is located in the eastern half of Section 24, Township 16 North, Range 1 West, W.M. *See Ex. 14.4c*, p. 1. The property is zoned Long-Term Forestry

¹ The term “Att.” refers to attachments to the Staff Report, which is Exhibit 1. The documents are referred to as “Att. A,” etc., for the sake of simplicity.

(LTF). *See* Staff Report, p. 1. The property is designated as Natural Resources in the Thurston County Comprehensive Plan. *See* CP, Map I-3, Existing Land Use.

1.4 The project site is forest land. *See* Att. D, p. 11. The current and proposed mining site is surrounded by commercial forest land on all sides. *See* Ex. 14.4a, p. 3. Adjacent to the Weyerhaeuser property, approximately 1,200 feet to the north, are residential lots, typically about 5 acres in size. *See* Att. D, p. 11; *see also* Staff Report, p. 15. The residential land to the north is zoned Rural Resource Residential 1/5 (RRR 1/5). *See* Staff Report, p. 1; *Testimony of S. McCormick*. The properties to the east, west, and south are working forest lands owned and managed by Weyerhaeuser. *See id.*; *see also* Att. A1, p. 14. All of these lands are zoned Long-Term Forestry, like the project site. *See id.*

1.5 The current mining operation and permitted mine boundary is 10.4 acres, as originally approved by the Department of Natural Resources. *See* Staff Report, p. 2; *see also* Att. A1, p. 4. The current 10-acre quarry has been mined for at least the past thirty years. *See* Att. D, p. 1; *see also* Ex. 14.4a, p. 3. After many years of continuous mining, the original resource is nearly depleted. *See id.*

1.6 Site operations include drilling, blasting, rock crushing, stockpiling, and loading. *See* Att. C1, p. 1; *see also* Ex. 14.4c, p. 1. Crushing and screening is conducted in the northeast area of the existing pit limits. *See* Ex. 14.3, p. 9. After crushing and screening, aggregate is stockpiled for loadout. *See id.* A front-end loader loads material onto road trucks. *See id.* The operation does not include washing of the extracted materials. *See* Att. A1, p. 4. Structures on the site include a small-scale shack and truck scales. *See* Att. D, p. 12.

1.7 The mining operation involves the use of construction/mining vehicles. *See* Att. B, p. 3. For example, the mining operation includes a John Deere 850 Dozer, Cat 349 Excavator, Cat 770 Offroad Dump Truck, Komatsu WA500 Loader and 470 Loader, 2000-gallon mobile diesel fuel truck, and Cat 314 Mini Excavator. *See id.*

1.8 The Applicant is not proposing to construct any structures pursuant to the SUP. *See* Staff Report, p. 33. The proposed expansion will include the same operations and activities as the existing mining operation. *See* Att. C1, p. 1; *see also* Ex. 14.4c, p. 1. No new activities are proposed at the site. *See id.*

1.9 The mining operation will be conducted during normal work hours. *See* Att. C, p. 5. The hours of operation are 7:00 a.m. to 4:30 p.m., Monday through Friday. *See* Ex. 14.3, p. 9. The expanded mine would support WSDOT construction projects that require night and weekend work. *See* Ex. 14.3, p. 10. Nighttime activities would be limited to loading and trucking rock material. *See id.* No crushing, blasting, or mining would occur during the nighttime. *See id.*; *see also* Att. C, p. 5. The total number of employees working at the site will be approximately eight. *See* Att. B, p. 3.

1.10 The proposal, as a “substantial expansion” of the existing mine, triggers the requirement for a Special Use Permit from the County. *See* Att. N; *see also* Staff Report, p. 33. The proposal seeks to (1) expand the mine boundary from 10.4 acres to 228 acres, and (2) expand the area of active mining from 10.4 acres to 42 acres. *See* Staff Report, p. 3; *see also* Att. D, p. 1. The Applicant intends to mine 7,500,000 cubic yard (15,000,000 Tons) of rock within a 42-acre area. *See* Att. C, p. 5. The mining proposed will be down to an elevation depth of 720 feet. *Testimony of W. Halbert*. The mining activities within the expansion area would occur over a period of thirty years. *See* Att. A1, p. 4. Future phases,

beyond the thirty-year period of phase one, would expand the operation to other parts within the 228-acre boundary. *See id.*

1.11 The area proposed for active mining under the SUP, i.e. the 42 acres, has been clear-cut. *See* Att. D, p. 1; *see also* Ex. 14.4c, p. 1; *see also* Ex. 14.4a, p. 3. Within the 42-acre area, trees are located only along the water courses and wetland area. *See* Att. D, p. 1. The area is vegetated with grass, brush, seedling trees or bare rock outcrops. *See id.*

1.12 There is no public or private water system serving the site. *See* Att. B, p. 2; *see also* Att. C1, p. 1. The mining operation uses bottled water for drinking water. *See* Att. A1, p. 14; *Testimony of K. Overton*. Water used for dust control is imported with a water truck. *See* Ex. 14.4a, p. 4.

1.13 There are no structures on the site that require wastewater treatment. *See* Att. C1, p. 1. There are no public or private sewer facilities or septic system serving the site. *See* Att. A, p. 1. The mining operation uses portable toilets for sewage. *See id.*; *see also* Att. A1, p. 14; *Testimony of K. Overton*. A portable service will also be utilized for the expanded operation. *See* Att. B, p. 2.

1.14 There are no electric utilities serving the site. *See* Att. D, p. 10. The mining operation uses onsite generators for power. *See id.*; *see also* Att. A1, p. 14.

1.15 The only public utility currently available at the site is refuse service. *See* Att. D, p. 16.

1.16 There are no known onsite buried or permanent fuel tanks on the site. *See* Att. A1, p. 17. Equipment is re-fueled using a mobile fuel truck. *See* Att. A1, p. 17. *See id.*

1.17 Access to the site is through a Weyerhaeuser logging road, approximately 26 to 30 feet wide, which connects to Johnson Creek Road. *See* Att. B, p. 2; *see also* Att. A1, p. 4. Johnson Creek Road, a county public road, is used for a short distance to reach the state highway, SR 509 SE. *See* Staff Report, p. 9; *see also* Ex. 14.4a, p. 3. The state highway is not under the jurisdiction of Thurston County. *See* Staff Report, p. 9; *Testimony of S. McCormick*.

1.18 The current mining operation generates approximately 60-80 vehicle trips on an average day. *See* Att. U, p. 5. This means there are 6-8 PM peak hour trips from this operation. *See id.* The proposed expansion will increase the trips by 10-20%. *See id.* This correlates to 6-16 additional daily trips or approximately 1-2 PM peak hour trips. *See id.*

1.19 There are ten wetlands (Wetlands A-I & K) on or adjacent to the project site (i.e. within the study area identified in the Critical Areas Report). *See* Att. W, pp. 7 & 14 (Table 1). All of these wetlands were rated as Category III or Category IV wetlands with habitat scores of 6-7. *See id.* Based upon these classifications, the buffers required around these wetlands are 220-240 feet. *See id.*

1.20 The project biologists originally identified six (6) streams within the proposed quarry expansion area. *See* Att. W, pp. 7 & 14. During subsequent field visits, the project biologists identified three (3) additional streams. *See* Att. V, p. 4. Thus, there are nine (9) streams (Streams 1-8 & J) on or adjacent to the project site and therefore within the study area. *See e.g.* Att. W, p. 27 (Figure 2).

1.21 The northern portion of Stream 1 is classified as Np, a non-fish perennial stream. *See* Att. W, p. 14. When Stream 1 reaches the northern portion of Wetland A, it qualifies as Type F. *See id.* The north end of Stream 5 is classified as a Type N seasonal stream. *See id.* However, when Stream 5 enters Wetland H it becomes a Type F stream. *See id.*, pp. 15-16. Streams 2, 3 and 4 are Type Ns, non-fish seasonally flowing streams. *See id.* Stream J is classified as a Type Np stream. *See* Att. W, p. 15. Streams 6, 7, and 8, by contrast, are all classified as Type F streams. *See* Att. W, p. 15. Thus, the streams onsite are all Type N or Type F, with buffers ranging from 100 feet to 150 feet. *See* Att. W, pp. 7 & 14-16.

1.22 Other than the wetlands and streams discussed above, the project biologists did not observe any other critical areas on the project site. *See* Att. W, p. 7.

1.23 The site contains steep slopes that qualify as geologic hazard areas. *See* Att. R2, pp. 7-8. However, given the topographically high location of the project situated on indigenous bedrock, geologic hazards (e.g. landslides, mudflows, seismic events, and liquefaction) do not pose a threat to the project. *See* Ex. 14.c, p. 4. In addition, the proposed mining operation does not appear to be able to cause geologic hazards such as landsliding. *See* Ex. 14.4c, p. 4.

1.24 The project site is not within Shoreline Management jurisdiction. *See* Att. L, p. 1 (MDNS); *Testimony of S. McCormick*. The expanded pit will not extend into the riparian areas along perennial water courses and wetland areas. *See* Ex. 14.4c, p. 1. There is no evidence of a 100-year flood zone within the property. *See* Att. A1, p. 18.

1.25 No mining operations are proposed within the recommended setbacks for streams, wetlands, or riparian areas. *See* Ex. 14.4e, pp. 4 & 6. "Critical area buffers will be identified in the field and avoided with all activity." *See* Att. B2, p. 2.

1.26 The project site includes Critical Aquifer Recharge Areas (CARA) in Class I, II, and III. *Testimony of S. McCormick; see also* Staff Report, p. 18 (CARA Map).

1.27 The Deschutes River is located approximately 2,500 feet northeast of the site. *See* Att. C, p. 7. The proposed mine expansion will be outside the Deschutes/McIntosh basin. *See* Att. B2, p. 2.

1.28 There are no known wells on or around the project site. *See* Ex. 5, p. 7. There are no domestic wells within 1,200 feet of the north property line of the property. *See* Ex. 14.4a, p. 3. The closest domestic wells appear to be just outside the 2,000-foot buffer around the proposed permit boundary. *See* Ex. 14.4c, p. 16 (Figure 5). There are no private water wells on the site or proposed for this project. *See* Att. A1, p. 16; *see also* Ex. 6 (Environmental Checklist ¶ B(3)(b)(1)); *Testimony of S. McCormick & K. Overton*. The site is not within a wellhead protection area. *See* Att. A1, p. 16; *Testimony of W. Halbert*.

1.29 The Department of Fish and Wildlife Priority Habitat and Species (PHS) mapping does not map any priority habitat or species within the proposed mine expansion area. *See* Att. W, p. 13. The closest mapped priority habitat and species are over 1,000 feet away from the extension area. *See id.* No known endangered species are located within the project area. *See* Att. D, p. 10. There were no specific comments on the proposal from the Department of Fish and Wildlife. *Testimony of S. McCormick*.

1.30 The Statewide Washington Integrated Fish Distribution (SWIFD) map does not identify any streams or occurrences of salmonids on or within the vicinity of the proposed quarry expansion. *See* Att.

W, p. 13. “The smaller tributaries and waterway on and adjacent to the proposed mine do not support salmon habitat because they are less than five feet wide, and no fish were observed within them.” *See* Att. W, p. 4.

1.31 Thurston County maps indicate there are prairie soils about 864 feet east of the proposed quarry expansion. *See* Att. W, p. 18; *see also* Staff Report, p. 17 (Prairie Soils Map). The maps also indicate there are pocket gopher soils approximately 1,271 feet to the west. *See* Staff Report, p. 17 (Prairie Soils Map). However, those mapped soils are not located within either the 228-acre boundary or the 42-acre expansion area. *See id.* Field observations by the project biologists determined that none of the emergent prairie species are present in this area. *See* Att. W, p. 18; *Testimony of J. Bartlett*. There are no prairie or pocket gophers on or within the vicinity of the proposed quarry expansion area. *See id.* The project biologists did not observe soils suitable for pocket gophers on or near the site. *See* Att. W, pp. 6, 10 & 18; *Testimony of J. Bartlett*.

1.32 On or about August 14, 2020, the Applicant submitted an application for a Special Use Permit to Thurston County. *See e.g.* Atts. A-B (Master Application and Supplemental Application-Special Use). The Applicant proposed to expand the Johnson Creek Quarry. *See id.* The Special Use Permit (SUP) application described the mining operation, including references to drilling, blasting, rock crushing, stockpiling, and the use of heavy equipment and vehicles. *See* Att. B, p. 3. A SEPA checklist was submitted with the application materials. *See* Staff Report, p. 2; *see also* Att. C.

1.33 On September 11, 2020, the SUP application was deemed complete by default, twenty-eight days after the submission of the application. *See* Att. K, p. 1.

1.34 On February 10, 2021, Thurston County issued the Notice of Application (NOA) for the proposed Special Use Permit. *See* Att. K. The notice was provided to relevant local and state agencies, sub-area project list subscribers, and property owners within 2,600 feet of the project site. *See* Att. K, p. 2; *see also* TCC 20.60.020(3)(c)(2) (stating mail notification shall be provided to owners within 2,600 feet of a special use permit for mineral extraction). The twenty-day comment period under the NOA expired at 4:00 PM on March 2, 2021. *See id.*

1.35 On May 13, 2025, Thurston County issued a Mitigated Determination of Nonsignificance (MDNS) for the Special Use Permit. *See* Att. L. Through the MDNS, Thurston County determined that the proposal does not have a probable, significant impact on the environment, provided that certain mitigation measures are followed. *See id.* The appeal period for the MDNS expired on June 3, 2025. *See id.*, p. 9. The MDNS was timely appealed by three parties.

1.36 On June 2, 2025, Mountain Stone Aggregate LLC filed an administrative appeal of the MDNS to the Hearing Examiner. *See* Appeal of Administrative Decision 6-2-2025 (Mountain Stone Aggregate). The Applicant’s appeal sought to modify several of the MDNS conditions alleging that those conditions were not reasonable or capable of being accomplished. *See id.* The Applicant alleged that the challenged conditions were not supported by identified SEPA policies, were not based upon a specific impact justifying the condition, or were not based upon specific standards by which Applicant could determine how and when the condition would be satisfied. *See id.*

1.37 On June 3, 2025, Raymond P. Alvarado and Frances T. Alvarado (“Alvarado”) filed an administrative appeal of the MDNS to the Hearing Examiner. *See* Appeal of Administrative Decision 6-3-

2025 (Alvarado). In the appeal, Alvarado alleged that several significant impacts were not adequately addressed in the MDNS, including impacts to the environment, health and quality of life. *See id.*

1.38 On June 3, 2025, a group of property owners or residents, including Isha Alexander and Patrick Kline, Kyle and Teah Gulbranson, Roslynn and Gary Gulbranson, Oscar and Georgene Talamantes, Sonja Anderson, Derek and Traci Johnson, and Gordon White (collectively “Alexander”) filed an administrative appeal of the MDNS to the Hearing Examiner. *See Appeal of Administrative Decision 6-3-2025 (Alexander)*. Alexander alleged the MDNS was issued in error because it failed to adequately consider or address a myriad of environmental impacts. *See id.* Alexander contended an EIS should be prepared for the proposed mine expansion. *See id.*

1.39 On June 9, 2025, Alvarado submitted a document, described as “Affirmative Defenses for Missed Comments,” which was intended to preempt any argument by the Applicant seeking to dismiss Alvarado’s SEPA appeal for lack of standing. *See Ex. 11*. Alvarado contended that the failure to submit comments on the MDNS during the comment period did not affect Alvarado’s standing to appeal the MDNS. *See id.*

1.40 On June 12, 2025, the City issued a Notice of Public Hearing (NOH) for the Special Use Permit, in accordance with the requirements of TCC 20.60.020(3)(g). *See Att. F3*. The NOH was posted at the project site; mailed to parties of record and owners of property within 2,600 feet of the project site; and published in the Nisqually Valley News. *See Staff Report, p. 3; see also Att. F3*. The NOH provided notice that the public hearing was scheduled for Tuesday, July 15, 2025, at 9:00 a.m., and would be conducted virtually through Zoom. *See Att. F3*.

1.41 On June 19, 2025, Alexander filed Appellants’ Motion for Summary Judgment, requesting that the Hearing Examiner rule that the MDNS was invalid as a matter of law for several reasons. *See Ex. 5*.

1.42 On June 20, 2025, the Applicant filed a Motion to Dismiss SEPA Appeal, requesting an order (1) dismissing the appeal of Alvarado for lack of standing, and (2) dismissing Derek and Traci Johnson as parties to the SEPA appeal by the Alexander Group, also for lack of standing. *See Ex. 8*.

1.43 On July 8, 2025, the Applicant filed Applicant’s Response to Motion for Summary Judgment. *See Ex. 14.1*.

1.44 On July 14, 2025, Alexander filed Appellant’s Reply in Support of Motion for Summary Judgment. *See Ex. 24*.

1.45 On Tuesday, July 15, 2025, commencing at approximately 9:00 a.m., the Hearing Examiner conducted the public hearing on the application, together with related motions and the SEPA appeals. The following individuals testified at the public hearing:

Kevin Hansen, LHg., LG, LEED AP,
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Esther Kronenberg
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1.46 The record includes the project file and all documents or materials submitted at the public hearing, up to the time that the Hearing Examiner closed the record in this matter. The exhibits included in the record and therefore considered by the Hearing Examiner are set forth on the Hearing Exhibit List attached to this decision as ATTACHMENT A.

FINDINGS AND CONCLUSIONS – SPECIAL USE PERMIT

The decision criteria for the approval of a special use permit are set forth in TCC 20.54.040(1)-(3). Each of these criteria are discussed below.

2.1 The proposed use complies with the Thurston County Comprehensive Plan. See TCC 20.54.040(1).

The Weyerhaeuser property, including the project site, is located in a rural area, outside any UGAs or LAMIRDs in the county. *See CP, Map I-3, Existing Land Use.* The property is designated as “Natural Resources” under the Thurston County Comprehensive Plan (CP). *See id.*

Priority uses in rural areas include forestry and mining, as well as scattered residences and rural residential developments. *See CP, Chapter 2, Land Use, Goal 1, Objective A, Policy 1.* Mineral extraction consistent with the CP should be permitted through the special use process. *See CP, Chapter 2, Land Use, Goal 1, Objective A, Policy 5.*

Consistent with Natural Resource designation, the site was zoned as forest lands of long-term commercial significance. *See Finding 1.3.* The primary land use activities in forest lands of long-term commercial significance include commercial forest management, mineral extraction, and their accessory uses. *See CP, Chapter 3, Natural Resource Lands, Goal 5, Objective A, Policy 1, p. 3-33.*

The proposed mine expansion complies with letter and intent of the CP. According to the CP, mining is a priority use in rural areas and a primary use of natural resource lands. The mining operation is therefore an appropriate and anticipated use for the project site. In addition, the proposed mine expansion is being considered through the special use process, as required by the CP and the zoning code. Thus, the project is subject to the special use review process as well as a myriad of conditions intended to eliminate or mitigate the potential impacts of the expanded operation.

The GMA and CP recognize that natural resource lands should be protected from encroaching residential development, given the importance of ensuring the continuing viability of such resources. *Testimony of S. McCormick.* However, there are already residences to the north, creating some conflict between the land uses. *Testimony of S. McCormick.* That said, CP policies recognize that forestry, mining, and lower density residential uses can and should co-exist in rural areas. *See e.g. CP, Chapter 3, Natural Resources, Goal 7, Objective B (lands adjacent to designated mineral lands should not interfere with mineral extraction and extraction should be allowed where the resources exist).*

The current 10.4 acre mine has been operating for at least 30 years, and the area is predominated by actively managed forest lands, another natural resource use. The pit itself, even as expanded, is surrounded by forest lands. There is no conflict in land use to the east, west, or south. The expansion of the active mine to 42 acres is not a radical departure from the current use. This proposal is a natural progression in the extraction of a large rock deposit, not the creation of an entirely new mining site in the middle of a residential neighborhood, for example.

The project site and most of the surrounding properties are forest lands of long-term commercial significance. *See* Staff Report, p. 4. Under the CP, such forest lands should be conserved (resulting in no net loss) and enhanced. *See id.*; *see also* CP, Natural Resources, Goal 5, Objective A. Although the mining operation will remove the land from active forestry for many years while the rock is extracted, the land will ultimately be returned to forest use. *See* Staff Report, pp. 4-5. After the resource mining is concluded, a reclamation will be carried out to put the property back into productive use as forest land. *See id.*; *Testimony of N. Rogers*. Since the CP permits mineral extraction in forest lands, the Hearing Examiner concludes that this sequence of events is contemplated by the CP.

Natural Resource Goal 8, Objective A of the CP states that the County should provide regulatory mechanisms that balance and minimize the conflicts between extractive industries, other land uses, and environmental concerns. *See* Staff Report, p. 5. A series of policies are identified by Staff as relevant to this goal, and to this project. Specifically, the Staff Report sets forth Policies 2-9, as follows:

2. *Extraction industries shall not adversely impact adjacent or nearby land uses, or public health and safety.*
3. *Areas where existing residential uses at densities of greater than 1 unit per 5 acres predominate shall be protected against intrusion by mineral extraction operations.*
4. *Buffer mineral extraction sites that are adjacent to existing residential areas. Buffers could consist of berms and vegetation to minimize impacts to adjacent property owners.*
5. *Mineral extraction activities shall not negatively affect nor endanger surface and groundwater flows and quality.*
6. *Some critical areas may prohibit or restrict allowed mineral extraction uses. Consider critical areas, including fish and wildlife habitat, wetlands, floodplains, aquifer recharge areas, and geologic hazard areas at the permit level before approving mineral extraction, as regulated under Thurston County Code, Title 24.*
7. *Consider maintenance and update of public roads at the permit level before approving mineral extraction.*
8. *Mineral extraction on designated agricultural lands should be avoided unless the soils can be restored to their original productive capabilities, as identified in a soil survey, as soon as possible after mining occurs.*
9. *Accessory uses to mining (crushing, screening, or washing) should only be located on adjacent mineral lands that are not co-designated with long-term agriculture.*

See CP, Chapter 3, Natural Resource Lands, Goal 8, Objective A, Policies 2-9.

The Applicant contended that Goal 8, Objective A directs the County to adopt certain regulations, rather than describing conditions or requirements of any particular project. *Testimony of N. Rogers*. The Applicant has a point. Under this part of the CP, it is the County's responsibility to adopt the regulatory scheme that fulfills goal and policies listed. The Applicant's obligation, then, is to satisfy regulations that

were adopted pursuant to the CP's policies. That said, the Hearing Examiner also concludes that the proposed mining operation fulfills the listed policies, to the extent applicable to this case.

With regard to Policy 2, the Staff contends that insufficient information was submitted to evaluate whether the proposal adversely impacts adjacent or nearby land uses, or public health and safety. *See* Staff Report, p. 6. Regarding Policy 5, Staff likewise contended that insufficient information was submitted to determine whether the project had negative impacts on surface and groundwater flows and quality. *See* Staff Report, p. 6. The Hearing Examiner disagrees.

The County departments all recommended approval of the project, subject to a range of conditions. After considering the record in detail, the Hearing Examiner concludes sufficient information is present and the project conditions, as modified by this decision, are sufficient. The specific support for this conclusion is provided throughout this decision.

The County most strongly suggested that information was lacking with respect to the hydrogeologic impacts. The Hearing Examiner disagrees for at least two reasons. First, sufficient information was provided to consider the hydrogeologic conditions. *See* Paragraph 2.3.10. Second, the County issued an MDNS, concluding that the project should be approved so long as certain conditions were satisfied. The County did not withdraw the MDNS or change its conclusions based upon the alleged lack of information. *Testimony of K. Hansen*. The County hydrogeologist, while expressing many reservations about the proposal, testified that he still had questions about the hydrology, "but not that many," and that the information was "within shooting distance." *See id.* He further stated that with some minor adjustments, the report would be complete. *See id.* Ultimately, the Hearing Examiner concludes that there is extensive information in this record and thus the project could be properly evaluated.

Policy 3 seeks to protect residential areas where the predominant density is higher than one dwelling unit per five acres. However, the residential area to the north consists primarily if not entirely of parcels at or greater than five acres in size. *See* Staff Report, p. 6. Thus, this policy is not relevant here.

Policy 4 encourages the use of buffers between mineral extraction sites and existing residential areas. There is a substantial buffer, from both topography and forest lands, between the mining site and the residential areas. *See* Paragraph 2.3.13. Moreover, Staff confirmed that this policy is satisfied because buffering from adjacent residential land uses is a project condition per applicable code. *See* Staff Report, p. 6.

Policy 7 requires that maintenance and updates to public roads should be considered prior to the approval of mineral extraction. The County has properly considered the potential impacts to public roads. *See* Paragraphs 2.2.1 & 2.3.6. The project is conditioned on certain access improvements, and these are the only improvements justified by this record. *See id.* In addition, no haul road agreements are required for this project. *See* Staff Report, p. 7; *Testimony of S. McCormick*. Therefore, this policy is fully addressed.

Policy 8 states that mineral extraction on agricultural lands should be avoided unless the soils can be restored to their original productive capabilities. Staff concluded that this policy applies because long-term forestry is a form of agriculture. *See* Staff Report, p. 7. The Hearing Examiner disagrees with this interpretation because the policy is primarily concerned with protecting prime agricultural land from being permanently removed from production. *See* CP, Chapter 3, Natural Resource Lands, p. 3-22 (noting that quality mineral deposits commonly exist under prime agricultural land). Even if forestry constitutes "agriculture" in the broad sense, the CP and zoning standards specifically allow mining on forest lands of long-term commercial significance. Even if the policy does apply, it is satisfied because the reclamation

plan will ensure that the property is returned to long-term forestry use after the mineral resources are extracted. *See* Staff Report, p. 7. The preparation and implementation of a reclamation plan is a condition of the SUP. *See id.*

Policy 9 precludes accessory uses (crushing, screening, and washing) on adjacent mineral lands that are co-designated for long-term agriculture. Staff concluded that no such accessory uses are proposed, and therefore this policy is not relevant. *See* Staff Report, p. 7. The Hearing Examiner agrees the policy does not apply, but for reasons different than suggested by Staff.

Staff asserted the proposal does not include accessory uses. *See* Staff Report, p. 7; *Testimony of S. McCormick*. However, the policy itself identifies crushing and screening as examples of accessory uses, and the mining operation includes both activities. *See* Paragraph 2.7. Various accessory uses were proposed as part of the Special Use Permit application. *See id.* Regardless of that, the policy does not apply because the Applicant does not propose to engage in accessory uses on land that is co-designated for long-term agriculture. No evidence was submitted showing there was any such co-designation. The site is designated for long-term forestry, a specific natural resource designation that carries with it specific rules and regulations. The vast majority of the site is also designated as mineral lands. *Testimony of K. Hansen; see also* Staff Report, p. 5 (Map of Designated Mineral Lands). There was no evidence, in contrast, that the site was designated for long-term agriculture, which is a separate class of natural resource land.

2.2 *The proposed use complies with Thurston County laws or plans. See TCC 20.54.040(1).*

2.2.1 *The proposal satisfies transportation concurrency requirements of Chapter 17.10 TCC.*

There is no evidence in this record suggesting that the public roads lack capacity to support the proposed development. The primary access is the state highway, which is outside the jurisdiction of the county. *See* Staff Report, p. 9. No comments were provided by WSDOT suggesting that the state highway lacked capacity or required improvements to support the use. Only a short segment of county road will be utilized to access the site. *See id.* The County reviewed the proposal and recommended approval of the project subject to a condition requiring minor improvements to the access to the county road. *See* Att. B1; *Testimony of A. Saint*.

The existing mining operation only results in 6-8 PM peak trips, and the proposed expansion will only add 1-2 PM peak trips to the transportation system. *See* Finding 1.18. This minor additional traffic would not appear to trigger concurrency review under Chapter 17.10. *See* TCC 17.10.030(A). Even if concurrency review was required, the additional traffic will not have an impact on the transportation system that requires mitigation, other than some access improvements. *See* Att. U; *Testimony of A. Saint*. The proposal therefore complies with transportation concurrency standards. *See e.g.* TCC 17.10.40(A) (stating that concurrency is satisfied when the necessary facilities are in place at the time of project approval).

2.2.2 *The proposal is conditioned upon obtaining a Class IV-General Forest Practices permit, consistent with Chapter 17.25.*

A development permit resulting in the removal of timber must be approved for a forest land conversion permit. *See* TCC 17.25.250(A). This includes land disturbing activities pursuant to a Special Use Permit. *See* TCC 17.25.250(A)(8). According to the Staff, a Class IV-General Forest Practices permit is required for this proposal and none of the exemptions from that permit apply. *See* Staff Report, p. 15.

The Applicant agreed that this permit was required and must be obtained. *Testimony of N. Rogers*. The requirement to obtain a Class IV-General Forest Practices permit is incorporated into the project conditions. *See* Condition 34. Therefore, this requirement of the county code is fulfilled.

2.2.3 *The proposal is not subject to tree conservation standards set forth in Chapter 17.27.*

Staff determined that this proposal is not subject to the County’s tree conservation standards because the project vested in 2020, prior to the adoption of the conservation standards in 2024. *See* Staff Report, p. 15. The Hearing Examiner agrees that the conservation standards do not apply, but for reasons other than vested rights.

Under current Washington law, applications for special use permits do not enjoy vested rights. Although the vested rights doctrine originated at common law, the vested rights doctrine is now considered purely statutory. *See Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 173, 322 P.3d 1219 (2014), *abrogated on other grounds*, *Yim v. City of Seattle*, 194 Wn.2d 682 (2020). Vested rights therefore only arise when a statute confers vested rights, such as for buildings permits, subdivision applications, and development agreements. *See id.* To the Hearing Examiner’s knowledge, there are no statutes conferring vested rights on special use permits. Therefore, the application is not exempt from the tree conservation standards based upon vested rights.

Although the vested rights doctrine does not apply, the Hearing Examiner nonetheless agrees that the tree conservation standards do not govern this application. The Hearing Examiner reaches this conclusion for the following reasons.

The Weyerhaeuser property, including the project site, is forest land of long-term commercial significance and is zoned accordingly. The purpose of the zone, among other things, is to enhance, protect, and perpetuate the ability of landowners to grow and harvest timber. *See* TCC 20.08D.010. The harvesting of the timber is permitted outright as integral to the intended use of the property. *See* TCC 20.08D.020(1)-(2) (which allow “forest practices” and “forest management activities”).

The TCC provisions on tree conservation serve a seemingly opposite purpose. For example, the tree conservation standards call for preservation of a minimum density of trees per acre; retention of a percentage of classes of trees; the replacement and planting of trees; and the preparation of tree conservation plans, among other things. *See* TCC 17.27.010 *et seq.*

Applying the tree conservation standards to this proposal would be inconsistent with the zoning and state law. Timber harvesting is the primary use of commercial forest land. The zoning code protects the Applicant’s right to engage in “forest practices.” The term “forest practices” is defined by state law to include “growing, harvesting, and processing timber.” *See* RCW 76.09.020(17). In addition, the zoning standards must be construed in a manner consistent with the Washington State Forest Practices Act (WFPA). *See* TCC 20.08D.010.

The WFPA creates a “comprehensive statewide system of laws and forest practices rules” intended to ensure the continued profitable growing and harvesting of timber. *See* RCW 76.09.010(2). With respect to forest practices, local governments have limited authority to adopt ordinances and regulations. *See* RCW 79.06.240(6). Any such regulations cannot be inconsistent with the forest practices regulations enacted pursuant to the WFPA. *See id.*; *see also Weyerhaeuser v. King County*, 91 Wn.2d 721, 736, 592 P.2d 1108 (1979) (holding that county shoreline regulations did not apply to logging practices outside of the

jurisdictional “shoreline”). In addition, any local regulations “shall not unreasonably prevent timber harvesting.” *See* RCW 79.06.240(6).

To the extent the tree conservation standards could be applied to preclude the harvesting of commercial timber, the Hearing Examiner concludes that those standards are preempted by state law. *See id.* The LTF zoning also outright permits commercial harvesting and allows mining as a special use. A mining operation within commercial forest lands necessarily requires the removal of most if not all of the trees in the area being actively mined. In fact, the 42-acre mining site has already been clear-cut, consistent with its commercial forestry classification.

The Hearing Examiner concludes that the LTF classification and the WFPA govern, rather than the 2024 tree conservation standards. To the extent the recently adopted tree conservation requirements could restrict the harvesting of timber from forest lands of long-term commercial significance, the Hearing Examiner concludes that either (a) the zoning standards take precedence with respect to this type of use, or (b) the inconsistent conservation standards are preempted by state law.

2.2.4 The shoreline master program is not relevant to this project because no mining activities occur within 200 feet of a shoreline.

The project site is not within the Shoreline Management jurisdiction. *See* Finding 1.24. The Deschutes River cuts through the northeast corner of the Weyerhaeuser property. *See* Staff Report, p. 16. However, no part of the current or expanded mining operation encroaches into the shoreline of the river, i.e. within 200 feet of the ordinary high water mark. *See id.*; *Testimony of S. McCormick*. As a result, the shoreline regulations do not apply to this proposal.

2.2.5 The Applicant is not required to obtain a mineral lands designation for the entire site in order to allow the proposed mining operation.

Staff expressed uncertainty about whether the proposed mining site was located entirely within designated mineral lands. *See* Staff Report, p. 5; *Testimony of S. McCormick*. Based upon geodata mapping, the county hydrogeologist testified that a small portion of the mining site appeared to be outside the designated mineral lands. *Testimony of K. Hansen*; *see also* Staff Report, p. 5 (Map of Designated Mineral Lands). Staff concluded that clarification was needed to “ensure mining will only occur within designated mineral lands.” *See* Staff Report, p. 5.

The Hearing Examiner is not convinced that additional mineral lands designations are necessary to allow the proposed mining operation. Initially, the Hearing Examiner emphasizes that the record is inconclusive regarding whether the 42-acre site exceeds the mineral lands designation shown on the county map. Staff believed so, but did not submit a map showing the 42-acre site in relation to the mineral land designations. The Applicant asserted the 42-acre site was most likely wholly within the mineral lands designation. *Testimony of N. Rogers*. However, the Applicant also did not provide a map to clarify the matter. For the sake of discussion, the Hearing Examiner will assume that a small portion of the site exceeds the mineral land designation, as described by Mr. Hansen.

Even assuming a small portion of the site is outside the mineral lands designation, it is not proper to condition the project on additional mineral lands designations, at least on this record. The Thurston County Code requires that sites must be designated as mineral resource lands “before new mineral extraction activities may occur.” *See* TCC 20.30B.010. However, as the Applicant argued, excavation and processing of minerals is allowed on *undesigned* land when connected with the “expansion of existing legally established and maintained mineral operations onto adjacent undesigned land...when a portion

of the existing site has been designated mineral resource land...” See TCC 20.30B.015(1)(c). Here, the existing mining operation was legally established and has been operating for decades. To the extent there is some expansion into undesignated lands, that is allowed under the above-referenced provision. As a result, there is no basis to condition the project on additional mineral land designations.

2.3 *The proposed use complies with Chapter 17.20 of the Thurston County Code. See TCC 20.54.040(1); see also TCC 17.20.010 et seq.*

A special use permit application for mineral extraction and its accessory uses must comply with Sections 17.20.040 through 17.20.270.² See TCC 17.20.020(A)(1), (3) & (B).

2.3.1 *The proposed mining operation satisfies the requirements for spill prevention. See TCC 17.20.040.*

Every mine shall have a hazardous materials and petroleum products spill prevention, detection, and clean-up plan. See TCC 17.20.040(A). The plan shall be reviewed and approved as part of the special use permit process. See *id.*; see also Staff Report, p. 10. The Applicant has submitted a Site Management Plan for the project. See Att. X; see also Att. C1, p. 1. The Site Management Plan includes the Spill Control Plan. See Att. X, pp. 12-17 (Part 4). These plans have been reviewed and approved by Thurston County Public Health and Social Services, Environmental Health Department. See *id.* Thus, the requirement for Spill Control Plan for the mining operation is satisfied.

2.3.2 *The proposed mining operation satisfies the requirements for the use of fuel and hazardous materials. See TCC 17.20.050.*

The mining operation, as proposed and conditioned, satisfies the requirements for handling fuel and hazardous materials. Specifically, the proposal adequately addresses the requirements of TCC 17.20.050(A)-(H).

Some standards of TCC 17.20.050 do not apply to this project. For example, the mining operation does not include an asphalt batch plant, so the standards for that accessory use are not relevant here. See Finding 1.6; see also TCC 17.20.050(G). Similarly, there are no underground or permanent fuel tanks on the site, so the standards for such tanks are not applicable to this proposal. See Finding 1.16; see also TCC 17.20.050(A). Instead, equipment will be refueled with a mobile fuel truck, consistent with TCC 17.20.050(E). See Finding 1.7.

As discussed above, a Spill Control Plan has been reviewed and approved by the County. See Paragraph 2.3.1. The Spill Control Plan addresses the remaining standards, such as the requirements for the use and handling of fuel, solvents, and vehicle and equipment maintenance. See *id.*; see also TCC 17.20.050(F) & (H). The project also includes numerous source control BMPs that apply to refueling, equipment maintenance, and storage of contaminating materials, among other things. *Testimony of R. Balmelli.* These BMPs will ensure that potentially contaminating materials will be properly handled to protect the environment. See *id.* In any case, the project conditions state that the operation must comply with the standards set forth in TCC 17.20.050. See Condition 10. Thus, the mine will be required to operate in a manner consistent with the code standards related to fuels and hazardous materials.

² This requirement applies to all SUP applications filed after June 28, 1993. See TCC 17.20.020(A)(3). The application here was submitted on approximately August 14, 2020. See Finding 1.31.

2.3.3 *The proposed mining operation provides for the control of drainage and stormwater consistent with Chapter 17.20. See TCC 17.20.060.*

Chapter 17.20 provides that drainage shall be controlled in accordance with Chapter 15.05 TCC, the Drainage Design and Erosion Control Manual (DDECM), or other applicable law. *See TCC 17.20.060(A)*. As relevant here, Chapter 15.05 adopts the 2022 edition of the DDECM by reference. *See TCC 15.05.010*. Thus, the specific engineering standards for drainage control, as applicable to this project, are set forth in the DDECM.

The DDECM contains extensive requirements for drainage and stormwater control. The project is required and designed to satisfy those requirements. *Testimony of R. Balmelli*. One of the uncontested SEPA conditions provides that the methods, BMPs, and outcomes for controlling stormwater quantity and quality must satisfy the requirements of the DDECM. *See Staff Report*, p. 38 (Condition 4). The Drainage Report prepared on behalf of the Applicant acknowledges that drainage and stormwater must be controlled in accordance with the DDECM. *See e.g.* Att. A1, p. 5 (stating that water quality will be protected through sediment controls and best management practices set forth in the DDECM).

To provide some specific examples, the project requires runoff treatment in accordance with the DDECM. *See Att. A1*, p. 10. The water treatment methods will be employed in a sequence that consists of an oil trap structure, grass-lined conveyance swales, wetpond, followed by additional sediment filtration using a grass-lined swale prior to full dispersion into the native forest land. *See Att. A1*, p. 5. In addition, conveyance ditches and swales will be used to convey runoff from the onsite haul roads to the mining pond areas. *See Att. A1*, p. 5. Check dams will be used to provide pre-treatment sedimentation control. *See id.* The BMPs will be designed for the 100-year flow rate for the site. *See id.*

Flow control is required for this project in accordance with the DDECM. *See Att. A1*, p. 10. “All onsite storm conveyance systems will be sized to accommodate the 100-year storm flows.” *See Att. A1*, p. 23. A detention/wetpond facility will be constructed for the first 5 years of the mining operation. *See Att. A1*, p. 10; *Testimony of R. Balmelli*. The detention pond will be utilized to meter out runoff at pre-developed rates to the downstream drainage systems. *See Att. A1*, p. 4. The proposed sediment pond (D1) will provide over 30,000 square feet of surface area. *See Att. A1*, p. 24. This will exceed the 24,066 minimum size required to contain a 100-year unmitigated flow. *See Att. A1*, pp. 24 & 25 (Figure 1).

Storm water discharges from the project site must be designed to meet the pre-developed flow rates at the natural basin discharge locations and outfalls. *See Att. A1*, p. 8. For example, the detention pond outlet has a control structure that meters the discharge of water to pre-development flow rates. *Testimony of R. Balmelli*.

The project is required to include wetland protections in accordance with the DDECM. *See Att. A1*, p. 11. The Drainage Report states that appropriate wetland protections for Category III or IV wetlands are included in the system designs. *See Att. A1*, p. 11. Site discharge must be modeled to protect downstream critical areas. *See Att. A1*, p. 8. The modeling followed the most recent requirements of the WDOE and the DDECM, including measures to protect downstream wetlands. *Testimony of R. Balmelli*. Accordingly, the developed site hydrology was modeled using WWHM2012. *See Att. A1*, p. 20. This is an appropriate model to utilize according to the DDECM. *See DDECM*, Vol 1, pp. 8 & 43.

To ensure that the system is fulfilling the design requirements, the “detention/wetpond and site analysis will be re-analyzed and revised every 5 years.” *See Att. A1*, p. 21; *Testimony of R. Balmelli*. Thus, the assumptions underlying the drainage mitigation will be re-assessed at regular intervals, to ensure that the runoff does not have negative impacts. The stormwater designs will be re-done every five

years, and a final design will be completed at the time of site reclamation. *Testimony of R. Balmelli*. The stormwater facilities will also be operated and maintained in accordance with the DDECM, further ensuring the protection of wetlands and streams. *See id.*

2.3.4 *The proposed mining operation, as conditioned, complies with the standards for wash and other process water. See TCC 17.20.070.*

All process water must be used, stored and disposed of in a manner that does not negatively impact ground or surface water. *See TCC 17.20.070*. This requirement may be fulfilled through best management practices or other appropriate measures set forth in TCC 17.20.070(A)-(D). These provisions likely do not apply to this proposal. The proposed operation does not include the washing of gravel. *See Finding 1.6*. The Applicant contends that the operation also does not generate process water. *See Applicant's Closing Argument, p. 14*. That said, to the extent the mining operation generates any process water, the project conditions require that the process water be used, stored, and disposed of in a manner that does not negatively impact ground or surface water. *See Condition 11*.

2.3.5 *The proposed mining operation is required to mitigate impacts on domestic water supplies. See TCC 17.20.080.*

The provisions of TCC 17.20.080 are remedial. If a mining operation causes the water quality of a domestic water supply to violate drinking water standards, the mining operators are required to remedy the problem. *See TCC 17.20.080*. Under this standard, the mitigation requirement is triggered by a failure to satisfy the water quality standards. *See id.*

There are private wells located a significant distance to the north, the opposite direction of the drainage patterns from the mining operation. *Testimony of W. Halbert*. As a result, there is very little risk to drinking water supplies from this operation. *See id.* In addition, there are a myriad of measures intended to protect ground and surface waters from the impacts of this project. *See Paragraphs 2.3.3 & 2.3.10*. Nevertheless, if the mining operation does impact domestic water supplies, the mine operators will be required to mitigate those effects. This requirement has been incorporated as a project condition. *See Condition 12*. Therefore, this requirement is satisfied.

2.3.6 *The proposed mining operation satisfies the requirements for roads serving a mining operation. See TCC 17.20.090.*

TCC 17.20.090 provides that roads internal to the site must satisfy the county road standards. *See TCC 17.20.090(B)(1)*. In addition, access points, i.e. the intersection of internal roads and the public roadway, must be safe and satisfy the county road standards. *See TCC 17.20.090(A)(3) & (B)(2)*. The Access roads themselves must also satisfy the county road standards. *See TCC 17.20.090(B)(3)*.

A traffic impact analysis (TIA) of the primary haul routes for a mining operation must be completed and show the estimated equivalent single axle loads (ESAL) for the minimum analysis period of twenty years. *See TCC 17.20.090(B)(4)*. If the primary haul routes are unable to carry the increased ESALs as determined by the county, a road maintenance agreement may be required. *See id.* Such agreements may include provisions concerning safety, restoration, and resurfacing of affected roadways, among other things. *See id.*

A plan shall be prepared and implemented which addresses material entering the county right-of-way as a result of the mining operations, including methods to control material entering the right-of-way. *See TCC 17.20.090(B)(5)*. Such material may include rock, sand, mud, soil, water, and/or oil, for example.

See id. The plan is subject to approval by the County Engineer, and may be included in a road maintenance agreement. *See id.*

The proposed mine expansion, as conditioned, satisfies the foregoing requirements. The internal access is required to satisfy county road standards, per the project conditions. *See* Condition 45. The County has also required improvements of the intersection between internal road and Johnson Creek Road. *See* Condition 44; *see also* Att. B1. Thus, the access point will be improved to ensure safety and satisfy the county road standards. *See id.*

The Applicant submitted a trip generation and distribution letter (TGDL), prepared by a qualified traffic engineer, in support of the project. *See* Att. U. The County confirmed that it accepted and had no criticisms of the analysis contained in TGDL. *Testimony of A. Saint; see also* Att. B1. The existing mining operation only results in 6-8 PM peak trips, and the proposed expansion will only add 1-2 PM peak trips to the transportation system. *See* Finding 1.18. Thus, the net increase in traffic, which includes heavy truck traffic, is relatively small.

TCC 17.20.090(B)(4) states that a TIA shall be submitted for a mining operation, and that TIA is to include the estimated ESAL for a twenty-year period. The Applicant did not submit a TIA, which is a more robust analysis of traffic than is contained in a TDGL. In addition, the TDGL did not include the required ESAL data. *See* Att. U. That said, the county road standards contain a different standard, triggering a TIA when developments generate 100 or more PM peak hour trips. *See* Att. U, p. 7 (Section 5.03.A).

The proposed mining operation generates nowhere near the threshold of traffic which triggers a requirement for a TIA. *Testimony of M. Jacobs.* Under those standards, developments that generate less than 100 PM peak trips *may* warrant a TIA, when necessary to evaluate “special or unique concerns” such as “developments that generate a high proportion of heavy truck traffic,” as determined by the County Engineer. *See id.* (Section 5.03.G). In this case, the County Engineer did not determine that “special or unique concerns” exist here or that the project resulted in a “high proportion of heavy truck traffic.” This makes sense given the total PM peak load of only 8-10 trips.

Ultimately, the County accepted the TGDL as providing the required analysis. *See* Att. B1. The County Engineer confirmed that the access improvements were sufficient to address the applicable standards. *Testimony of A. Saint.* No other off-site improvements were necessary as a result of this proposed operation. *Testimony of A. Saint; see also* Att. B1. In addition, the oversight regarding ESAL data was corrected by a further submission by the traffic engineer. *See* Att. V1. The County considered this information and did not require a road maintenance agreement, which is a matter left to the County’s discretion. *See* TCC 17.20.090(B)(4).

The Applicant also submitted the Spill Control Plan which includes a series of source control BMPs, including the management of sediment that could be tracked onto paved public roads. *See* Ex. 14.4e, p. 14. In addition, the project is conditioned on compliance with RCW 46.61.655, which requires loads to be secure and covered. *See* Condition 20; *see also* RCW 46.61.655(1)-(2). Notably, the statute specifically requires loads of gravel to be covered to prevent spillage, and vehicles with deposits of mud, rocks, etc. to be cleaned of such material before being operated on the public roads. *See* RCW 46.61.655(3) & (4)(b). The Spill Control Plan and Condition 20 mitigate against material entering the road right-of-way. As a result, the requirements of TCC 17.20.090(B)(5) have been addressed.

The Hearing Examiner defers to the County’s analysis on this issue. County officials have discretion in interpreting and applying County codes, in particular when there are apparently inconsistent provisions

(namely, the TIA requirement of Chapter 17.20 versus the TIA thresholds of the adopted county road standards). Moreover, only a small segment of county roadway is affected, the additional traffic is nominal, and no material impacts to the county roadway were identified that were not addressed through discrete access improvements. Under the circumstances, the Hearing Examiner concludes that the proposal satisfies the road requirements, as the County Engineers determined.

2.3.7 The proposed mining operation makes appropriate provisions for dust and smoke control. See TCC 17.20.100.

The mineral extraction standards provide that the mining operator shall obtain all required preconstruction approval permits from the Olympic Regional Clean Air Agency, and that the operator shall comply with all the requirements of that agency. *See TCC 17.20.100.* The standards further state that the approval authority may require methods of dust control, such as water trucks and sprinklers, that will mitigate the impacts from dust. *See id.* These requirements of the county code are incorporated, in their entirety, as a project condition. *See Condition 13.* Therefore, this standard is addressed.

2.3.8 The proposed mining operation, as designed and conditioned, satisfies the standards with respect to noise levels and noise mitigation. See TCC 17.20.110.

A mining operation must comply with the noise standards set forth in WAC 173-60. *See TCC 17.20.110(A).* Noise from a mine must be monitored at the property boundary, at least quarterly, and under normal operating conditions and periods. *See TCC 17.20.110(A).* The monitoring must be performed by qualified personnel and instruments. *See id.* In addition, all mines adjacent to a residential zone “shall conduct an environmental noise assessment prior to permitting that identifies existing environmental noise.” *See TCC 17.20.110(D).* The assessment shall also identify potential operational noise, impacts, and mitigative measures. *See TCC 17.20.110(D).*

The site of the existing and proposed mining operation is surrounded by long-term forest land. *See Ex. 14.3, p. 3; see also Finding of Fact 1.4.* The nearest residential property is approximately 1,200 feet to the north. *See id.* The properties to the south, east and west are forest lands. *See id.* A sound analysis was prepared for this project by Iona Park, P.E. on behalf of BRC Acoustics & Audiovisual Design (“BRC Acoustics”). *See Ex. 14.3.* BRC Acoustics monitored and took sound measurements at the boundaries of two representative residential properties to the north. *See Ex. 14.3, pp. 4 & 8.* These measurements demonstrated that the noise levels from the existing mine, under normal operating conditions, were below the State of Washington daytime and nighttime noise limits. *See Ex. 14.3, pp. 8-9.* The main sources of noise at these locations were distant traffic, residential activity, and occasional aircraft fly-overs. *See Ex. 14.3, p. 9.* Daytime mining activities at the mine were “occasionally and faintly audible during daytime hours.” *See id.*

Sound-levels for the proposed mining expansion were calculated using a model which takes a range of factors into account, including the sound power level, directivity, location and height of the noise source, distance, ground cover and topography, atmospheric conditions, and the location and height of the receiver. *See Ex. 14.3, p. 11.* Four noise-modeling scenarios were selected and analyzed as representative of existing and proposed mining operations. *See Ex. 14.3, pp. 11-13.* Five locations at or within the residential properties to the north were used for the modeling. *See Ex. 14.3, pp. 4 (Project Site and Sound Analysis Locations) & 14 (Table 6-2).*

The sound model demonstrated that the mining operation satisfies the State of Washington daytime and nighttime noise limits by a margin of at least 5dBA “during all existing and proposed operations.” *See Ex. 14.3, p. 17.* None of the expected sound-level increases exceeded 7 dBA above measured existing

ambient sound levels. *See id.* “Projected sound levels during future operations are expected to be within 3 dBA of calculated sound levels from existing operations from the Johnson Quarry.” *See id.* As a result, the sound analysis concludes that “no significant noise impacts are expected as a result of the proposed quarry expansion.” *See id.* As a result, no additional noise mitigation measures are required for this proposal. *See id.*

The sound analysis separately considered noise generated from truck traffic. Sound levels from truck traffic were calculated using the FHWA model for calculating traffic noise. The modeled sound levels from truck traffic are 48 dBA under existing conditions and 49 dBA after the proposed mine expansion. *See Ex. 14.3, p. 18.* The traffic sound levels, with or without the proposed quarry expansion, “do not approach or exceed the FHWA Abatement Criterion of 67 dBA at the residences nearest the truck route.” *See id.* The one decibel increase in sound level from the proposed expansion is “well below the 10-dBA increase criterion considered an impact by the FHWA and WSDOT.” *See id.* Under the circumstances, the sound analysis concludes that no noise impacts are expected as a result of truck traffic associated with the proposed quarry expansion. *See id.*

The original sound analysis was completed in 2021. In one comment, the study was criticized as outdated. *See Ex. 2A.* However, at that time, the proposed mining operation was farther to the north, resulting in a minimum buffer of 1,200 feet to the residential properties to the north. *Testimony of I. Park.* Since then, the proposed mining expansion area has been adjusted to the south and east, resulting a minimum buffer of approximately 1,800 feet. *See id.* After the project modifications, the sound engineer made a comparison between the 2021 model and the current proposal, concluding that the conclusion reached in the original sound analysis still stands. *See id.* The sound engineer also confirmed, upon inquiry by the Hearing Examiner, that the conclusions of the sound analysis would not change in the event trees were harvested in the buffer area between the mining operation and the residences to the north. *See id.* The topography of the site and buffer area, rather than trees, are the primary factor ensuring that noise levels remain below the applicable limits. *See id.*

2.3.9 *The proposed mining operation satisfies the rehabilitation and conservation requirements of Chapter 17.20. See TCC 17.20.140.*

If a reclamation plan is not required by the Washington Department of Natural Resources (DNR), the Applicant is required to submit a rehabilitation plan in conjunction with the application for a special use permit. *See TCC 17.20.140(A)(1).* The rehabilitation plan, when required, must address various matters set forth in the county code provisions on mineral extraction. *See TCC 17.20.140(A)(1)-(10).* The code further provides that mineral extraction is prohibited in areas where a conservation easement has been established to protect wildlife and habitat of certain species, such as pocket gophers. *See TCC 17.20.140(C).*

The current mining operation was authorized by DNR. A reclamation plan was required pursuant to the DNR permit, and will be required for the proposed expansion. *See Staff Report, pp. 5, 7 & 12; Testimony of S. McCormick.* This is acknowledged in the conditions proposed by the Planning Department. *See Condition 39.* By the terms of TCC 17.20.140(A)(1), a rehabilitation plan under local code is not required for the mining operation. *See Staff Report, p. 12; Testimony of S. McCormick.* There is no evidence that a conservation easement has been established on the project site. *See Staff Report, p. 12.* Therefore, the proposed expansion of the mining operation is not prohibited by the terms of TCC 17.20.140(C).

2.3.10 *The Applicant submitted a hydrogeologic report that includes the elements and information required by Chapter 17.20 TCC. See TCC 17.20.200.*

When a hydrogeologic report is required by Chapter 24.10 TCC, it must include the additional elements listed in TCC 17.20.200. The required elements are addressed below.

(a) *The hydrogeologic report includes groundwater elevation data based on at least one year of water level data, as required by TCC 17.20.200(A).*

A project hydrogeologist installed a series of monitoring wells to the north and south of the proposed mining area. *See Ex. 14.4c, pp. 5 & 17 (Figure 6).* The monitoring wells were placed in locations where previous “blast holes” had been drilled and in which moderate to significant amounts of groundwater had been encountered. *See id., p. 6; Testimony of W. Halbert.* According to the report, groundwater elevations were monitored for twelve successive months. *See Ex. 14.4c, p. 6.* The project hydrogeologist confirmed that the Applicant has now collected groundwater elevation data for over two years. *Testimony of W. Halbert.* In any case, the required groundwater elevation data is included in the hydrogeologic report. *See id., pp. 6, 18 (Figure 7), 19 (Figure 8) & 64-71 (Attachment C).* Thus, the hydrogeologic report submitted in this case includes the data required by TCC 17.20.200(A).

(b) *The hydrogeologic report considers aquifer properties (whether confined or unconfined), such as but not limited to hydraulic pressure, groundwater flow direction and velocity, recharge areas, and discharge areas of groundwater, per TCC 17.20.200(B).*

The hydrogeologic report discusses the hydrogeology of the area in some detail, including the McIntosh Formation that is the main source of water for houses in the area around McIntosh Lake and south of Highway 7, as well as the Northcraft Formation, which is the location of the current and proposed mining operation. *See Ex. 14.4c, pp. 4-5.*

The Groundwater at the project site occurs “under both unconfined and confined conditions” within fractures and fragmented rock zones within the Northcraft formation. *See Ex. 14.4c, p. 5.* Groundwater that appears in these areas is localized and laterally discontinuous. *See id.*

The hydrogeologic report provides that recharge to the groundwater system within the Northcraft formation in the area of the mining site is from “direct infiltration of precipitation and runoff into surface fractures within the volcanics.” *See Ex. 14.4c, p. 6.* Although available modeling suggests there is no recharge, the report concludes that some recharge occurs in the Northcraft because “groundwater levels were observed to rise during the winter months in most of the monitoring wells and discharge at many of the springs is continuous throughout the year.” *See Ex. 14.4c, p. 7.* The hydrogeologic report estimates that the recharge rate in the Northcraft formation is approximately 15 to 20 inches per year. *See id.*

Sixty-four (64) test holes were drilled in and around the mine area in search of quarry rock. *See Ex. 14.4a, p. 7.* Of those test holes, only eight (8) holes had any type of ground water. *See id.* The test holes demonstrate that this area has little ground water. *See id., pp. 7, 14 (Figure 4) & 36-49 (Drill Log).* “From a hydrogeologic standpoint, ground water within the Northcraft is restricted to discontinuous fractures and faults poorly suited for domestic water wells.” *See Ex. 14.4a, p. 6.*

Since the test holes were drilled, the project hydrogeologist has installed groundwater monitoring wells. *Testimony of W. Halbert.* This information has been used to update the hydrogeologic report for the project, as discussed above.

The Hearing Examiner concludes that the hydrogeologic report considers the aquifer properties as required by TCC 17.20.200(B).

(c) The hydrogeologic report addresses the sources and receptors of physically available water, including the mine's water sources, including surface and groundwater; and surface waters and sensitive receptors, such as wetlands, habitat, lakes, and streams, affected by the proposed activities, as required by TCC 17.20.200(C).

The mining operation does not have a water source. *See* Finding 1.12. The water needed for the operation, such as drinking water or for dust control, will be imported to the site. *See id.* The project will result in runoff that must be controlled through storm water facilities designed to satisfy the standards of the DDECM. *See* Paragraph 2.3.3; *see also* Att. A1. The storm water will be treated, metered out at pre-development rates, and eventually dispersed to recharge ground water and surface water systems, including the wetlands to the south. *See id.* The potential effects of the mining operation on both groundwater and surface waters will be continuously monitored. *See id.* As a result, the requirements of Subsection 200(C) are properly addressed.

(d) The hydrogeologic report identifies and addresses impacts to nearby water users, per TCC 17.20.200(D).

The county code requires the hydrogeologic analysis to identify and address impacts to nearby water users. To do so, the report should identify the nearby water rights and quantify the volume of water that may be affected by the proposed mining operation. *See* TCC 17.20.200(D)(1)-(2). The code states that this requirement is "satisfied if the applicant/owner can show proof of a state issued water right permit that authorizes all water uses being proposed for the activity." *See* TCC 17.20.200(D)(3).

Subsection 200(D) is intended to ensure that the volume of water used by a project applicant does not impair the water rights of existing users. If the Applicant can show, however, that it holds a superior water right (i.e. it has a water right permit for all the water it will use), then the requirement is "satisfied." In this case, the Applicant is not withdrawing any water from ground or surface sources to support the use. *See* Finding 1.12. As a result, there is no impact to existing water rights and TCC 17.20.200(D) is not applicable.

(e) The hydrogeologic report provides the locations of existing wells within one thousand feet of the excavation boundary, including well logs, withdrawal rate, and other relevant information that may be available, per TCC 17.20.200(E).

There are no water wells on the project site. *See* Finding 1.28. The closest wells are approximately 1,200 feet north of the northern boundary of the site, which is approximately 2,000 feet from the excavation boundary. *See id.* Because the nearest wells are more than 1,000 feet from the excavation boundary, the requirements of TCC 17.20.200(E) do not apply. Regardless of this, the hydrogeologic report includes well logs, withdrawal rates, and other relevant information about all of the drinking wells in the vicinity. *See e.g.* Ex. 14.4c, pp. 36-55 (Attachment A, Water Well Logs). Therefore, even if this information was required for wells outside 1,000 feet, the identified information has been provided in the hydrogeologic report.

(f) The hydrogeologic report includes a description of effects including water quality and water level changes expected to occur in the existing wells within one thousand feet as a result of mining activity, in accordance with TCC 17.20.200(F).

Subsection 200(E) requires the hydrogeologic report to provide the location of water wells within 1,000 feet of the excavation boundary. Subsection 200(F) requires the hydrogeologic report to describe the effects of the mining operation on water quality/levels within “these existing wells.” In other words, Subsection 200(F) requires the report to discuss water quality/level impacts on the wells identified pursuant to Subsection 200(E). Because there are no such wells, the requirements of Subsection 200(F) do not apply. Regardless of that, the hydrogeologic report considers the water quality and level impacts of the mining operation on water wells, even though the only wells in the vicinity are more than 1,000 feet away.

As previously discussed, a series of monitoring wells were installed to measure ground water levels. Groundwater elevations were monitored for over two years, providing substantial data on water levels. *See Paragraph 2.3.10(a); Testimony of W. Halbert.* The monitoring wells will be utilized to track the potential impacts of the mining operation on ground water levels. *See Att. Z, p. 5.* In addition, the project engineer designed stormwater facilities to ensure that water levels are maintained. *Testimony of R. Balmelli; see also Att. A1.*

The hydrogeologic report also considers the potential impacts of mining on water quality. The project hydrogeologist monitored groundwater for pH, conductivity, turbidity, temperature, dissolved oxygen and salinity at each monitoring well. *See Ex. 14.4c, pp. 7 & 30-31 (Table 5).* Groundwater samples were collected each month for analysis for dissolved heavy metals, such as lead and zinc, and for petroleum hydrocarbons, such as diesel, hydraulic oil, and motor oil. *See Ex. 14.4c, pp. 8 & 32-36 (Table 6).* The report determined that the existing mining operation did not have a material impact on the water quality of the groundwater. *See Ex. 14.4c, pp. 8-9.*

(g) The hydrogeologic report includes the proposed final depth of excavation, per TCC 17.20.200(G).

The project hydrogeologist confirmed that the proposed final depth of excavation for the mine is 720 feet above mean sea level. *Testimony of W. Halbert.* In addition, as previously discussed, the hydrogeologic report includes substantial data regarding the groundwater elevations. *See Paragraph 2.3.10(a).* Thus, this requirement has been addressed.

(h) The tests set forth in TCC 17.20.200(H), for background water quality and water chemistry parameters, are only required if the proposed excavation intercepts an aquifer.

The project hydrogeologist confirmed that the operator would not be mining into an aquifer. *Testimony of W. Halbert.* He emphasized that the mining would take place down to 720 feet above mean sea level. *See id.* The groundwater elevations of the site, as shown in the data contained in the hydrogeologic report, are almost entirely below 720 feet, and therefore will not be impacted by the mining operation. *See id.* As a result, the tests called for in TCC 17.20.200(H) are likely not required for this project. The one possible exception is a small part of the southwest corner of the site, which shows a groundwater level of 725 feet. *See id.* The affected portion is very small and no actual impacts to the groundwater are anticipated. *See id.*

That said, to the extent that encroachment into groundwater may occur, the operator will be required to complete the testing mandated by TCC 17.20.200(H). The Applicant recognized this reality. *See* Applicant's Closing Argument, p. 12. The Hearing Examiner has revised the project conditions to address this eventuality. *See* Condition 46. With that condition in place, the Hearing Examiner concludes that this requirement is properly addressed.

(i) *The hydrogeologic report includes an analysis of turbidity and water chemistry related to the proposed mineral extraction, per TCC 17.20.200(i).*

As previously discussed, the hydrogeologic report includes an analysis of turbidity and water chemistry related to the proposed mining operation. *See* Paragraph 2.3.10(f). Therefore, this requirement is satisfied.

(j) *The hydrogeologic report addresses the estimated effects of stormwater and process water, as required by TCC 17.20.200(J).*

The hydrogeologic report notes that a surface water management plan has been prepared to control water quantity and water quality of storm water discharged from the site. *See e.g.* Ex. 14.4a, p. 9. Best management practices will be employed to ensure that waters are protected. *See id.* A surface water monitoring program will also be conducted for the life of the project to detect potential contamination that may leave the site, as well as any changes to surface water drainages or levels downslope of the site. *See id.* The proposed operation does not include the washing of gravel or other activities that will generate process water. *See* Paragraph 2.3.4. Thus, the hydrogeologic report was not required to address this issue. To the extent any process water is generated, for some unknown reason, it must be handled and disposed of in accordance with the applicable standards. *See id.*; *see also* Condition 11.

(k) *The hydrogeologic report addresses the estimated cumulative effects on water quantity in the area downgradient and immediately surrounding the mineral extraction site, per TCC 17.20.200(K).*

As previously discussed, the hydrogeologic report notes that a surface water management plan has been prepared to control the quantity of storm water discharged from the site. *See* Paragraph 2.3.3. A surface water monitoring program will also be conducted for the life of the project to detect any changes to surface water drainages or levels downslope of the site. *See id.* Flow control must be implemented for the project in accordance with the DDECM, a requirement that has been incorporated into the project conditions. *See id.* The drainage system is designed to meter out run-off at pre-development rates. *See id.* Storm water discharges will be designed to meet pre-development flow rates at the natural basin discharge locations. *See id.*

(l) *The hydrogeologic report includes an adaptive management plan to address unexpected impacts to surrounding water users, groundwater, surface water, water quality, and wetlands or habitat, per TCC 17.20.200(L).*

The project engineer has prepared a Contingency & Adaptive Management Plan addressing unexpected impacts of the operation, as required by TCC 17.20.200(L). *See* Att. Z. This requirement is therefore fulfilled.

(m) The hydrogeologic report identifies areas where risk may exist and financial security such as bonds may be appropriate, as required by TCC 17.20.200(M).

Subsection 200(M) states the hydrogeologic report should address whether financial security, such as bonds, may be appropriate. This subsection refers to TCC 20.54.070, the special use standards, for guidance on this question. The relevant portion of the special use standards is TCC 20.54.070(21), which concerns mineral extraction. Those provisions state that a bond may be required in cases where rehabilitation requirements of the county exceed those of DNR. *See* TCC 20.54.070(21)(d). The County has not asserted that its rehabilitation requirements exceed those of DNR. In addition, the county code provides that no county rehabilitation plan is required when a DNR rehabilitation plan is required. *See* Paragraph 2.3.9. That is the situation here. *See id.* As a result, there is no requirement for bonding or other financial security to support this proposal.

2.3.11 The hydrogeologic report includes a water quality monitoring system in accordance with TCC 17.20.210.

When a hydrogeologic report is required for a project pursuant to Chapter 24.10 TCC, a water quality monitoring system must be devised and submitted to the county for approval. *See* TCC 17.20.210(A). The water quality monitoring system must become part of the special use permit conditions. *See id.* The monitoring plan must include monitoring wells, surface water sampling points, and parameters and schedules for sampling. *See* Staff Report, p. 14.

The hydrogeologic report addresses all of the above requirements. The Applicant has proposed a water quality monitoring system, which includes installation of monitoring wells, surface water sampling points, and the parameters and schedules for sampling. *See e.g.* Ex. 14.4a, p. 8 (describing the groundwater monitoring plan) & Att. A1, pp. 23-25 & 27-28 (SWPPP provisions requiring surface water sampling and reporting). The monitoring and sampling requirements are incorporated into the project conditions. *See e.g.* Conditions 23 & 29. Therefore, this requirement is satisfied.

2.3.12 The proposed mining operation maintains a sufficient horizontal distance between the excavation activities and the nearest drinking water wells. See TCC 17.20.220.

To protect water quality, the approval authority must determine the minimum horizontal distance to be maintained between an excavation and any well used for potable water. *See* TCC 17.20.220. The Staff Report provides that this determination is within the purview of Thurston County Public Health and Social Services, Environmental Health Department. *See* Staff Report, p. 14. The Environmental Health Department's comments acknowledged that there is no potable drinking water supply located on the site. *See* Att. C1, p. 1. In addition, the Environmental Health Department noted that a hydrogeologic analysis was necessary to document baseline data and impacts to groundwater, and to establish groundwater monitoring and a contingency plan. *See id.*

As noted, there are no domestic wells on the site. *See* Finding 1.28. The nearest wells are north of the site, and are more than 1,200 feet of the north property line of the site. *See id.* There are no wells in proximity to the mine, in its current configuration or as expanded. Further, the expanded operation does not pose a material threat to the domestic wells to the north. *See* Paragraph 2.3.5. The Hearing Examiner concludes that the proposed mining operation already includes a substantial area of separation between the excavation area and the nearest water wells. Therefore, a minimum horizontal distance to protect water quality is provided by this proposal.

2.3.13 *The proposed mining operation satisfies the standards for landscaping and screening. See TCC 17.20.240.*

A berm around the perimeter of the mining site is required unless the operator can demonstrate that a berm is not necessary to mitigate noise and visual impacts. *See TCC 17.20.240.* When imposing specific conditions for landscaping, screening, and berming, the approval authority shall consider site conditions, proximity to residential users, and existing views from neighboring properties. *See id.* Under the circumstances of this case, a berm is not needed or appropriate. *See Staff Report, p. 15 (acknowledging that a berm “may not be the best solution” here); Testimony of S. McCormick.*

A berm is not necessary for visual screening. The excavation area is surrounded by working forest land, screening the site in all directions. The nearest residential properties are to the north, about 2,000 feet from the mining pit. *See Finding 1.28.* Given the distance, topography, and slopes of the pit itself, the mining operation cannot be seen from the residential properties to the north. *Testimony of C. Aldrich.*

A berm is also not necessary to address noise impacts. The topography of the mining site and the land between the mining site and the residential properties to the north mitigates the potential impacts from noise. *Testimony of I. Park.* Even if Weyerhaeuser harvested trees on its land between the site and the residential areas to the north, the residential properties would not experience an increase in noise from the operation. *See id.* In other words, the noise analysis would not change even if trees were removed from that area. *See id.*

The project site is already surrounded by working forest lands. This is not a case in which typical landscaping measures make much sense. Even so, there may be some visual impacts from the truck traffic through the haul road along the northern perimeter of the site. As a result, a natural forested buffer should be maintained in that location, as described by the Project Manager. *Testimony of C. Aldrich.* Accordingly, a project condition was added for this purpose. *See Condition 33.*

2.3.14 *The proposed mine satisfies the various operational standards set forth in Chapter 17.20.*

The proposed mining operation includes features and conditions that ensure compliance with the relevant operational standards. For example, mine owners are required to complete annual registration forms, on an annual basis, per TCC 17.20.150. *See Condition 18.* The mine operator must provide access to the site for inspections, per TCC 17.20.160. *See Condition 19.* The operator must employ reasonable site access control measures to prevent illegal dumping, per TCC 17.20.180. *See Condition 21.* The mine operator must also post contact information to facilitate reporting of complaints or violations, as required by TCC 17.20.190. *See Condition 22.*

Operating hours are limited consistent with TCC 17.20.115. *See Condition 15.* Lighting at the site shall be limited to lowest intensity consistent with the safe operation of the mine, and lighting shall be shielded to prevent unnecessary light or glare, per TCC 17.20.130. *See Condition 17.* All vehicles leaving the site must comply with state law to secure load materials and for the cleaning of vehicles, per TCC 17.20.170. *See Condition 20; see also Paragraph 2.3.6.*

The extraction of materials will take place at least one hundred feet from any relevant district or property boundary, as required by TCC 17.20.330. *See Staff Report, p. 14.* No deviation from this standard is necessary for this proposal. *See id.* Stockpiles maintained as part of the mining operation must satisfy the standards of TCC 17.20.250. *See Condition 24.* Similarly, no ground vibration caused by

blasting or machinery can exceed the limits established by state regulations, as provided in TCC 17.20.260. *See* Condition 25.

The site is large and remote, with plenty of space to satisfy the requirement to provide at least one off-street parking space for each employee and two additional off-street parking spaces for visitors, per TCC 17.20.270. *See* Staff Report, p. 15; *Testimony of S. McCormick*.

2.4 *The proposed use complies with all applicable federal, state, and regional laws and plans. See TCC 20.54.040(1).*

No specific discussion of federal requirements was presented to the Hearing Examiner. There are some requirements pursuant to state law, which are also addressed in the project conditions. Specifically, the project is conditioned upon monitoring plans that memorialize water containment designs and operational practices that conform with Ecology Sand and Gravel Permit monitoring requirements. *See* Condition 29. The remainder of the codes and regulations applicable to this project are addressed throughout this decision. The Hearing Examiner concludes that this criterion is therefore satisfied.

2.5 *The proposed use complies with the general purposes and intent of the applicable zoning district and subarea plans. Open space, setback and bulk requirements are no less than that specified for the zoning district in which the proposed use is located. See TCC 20.54.040(2).*

The project site is zoned Long-Term Forestry (LTF). In the LTF zone, the “primary uses” include forest practices, forest management activities, and agriculture, among other things. *See* TCC 20.08D.020(1), (2) & (5). “Mineral extraction” is a “special use” that must be authorized through a Special Use Permit. *See* TCC 20.08D.025; *see also* Chapter 20.54, Table 1 (Use 21, Mineral extraction). The term “mineral extraction” means the removal of minerals, including but not limited to sand, gravel, and rock from an excavation in the earth. *See* TCC 20.03.040(84.5).

Chapter 20.08D of the Thurston County Code sets forth the use and design regulations for the LTF zone. Section 20.08D.040 states the design standards applicable to developments in this zone. Most of these design standards are not relevant here because they are directed at regulating residential developments and subdivision proposals. *See e.g.* TCC 20.08D.040(2)(a)-(b), (3) & (4) (Design Standards); *see also* TCC 20.08D.045 (Density). The potentially relevant design standards include the maximum building height of 35 feet; the minimum yard requirements for “all other structures” set forth in Chapters 20.07 and 20.54; and the maximum hard surface coverage for new development of ten percent, for lots two and one-half acres or greater. *See* TCC 20.08D.040(1), (2)(c) & (5)(a).

Staff concluded that the proposed mining project satisfied the minimum development standards. The Hearing Examiner agrees. No structures will be constructed as part of this project. *See* Staff Report, p. 33. As a result, there is nothing to implicate the building height limitation or the setback requirements for structures. In addition, no impervious surfaces will be created through the construction of buildings or other structures. Hard surfaces may result from the improvements to the internal access road, although that road already exists. Regardless of that, there is no evidence that such improvements will create impervious surfaces above any stated threshold for such a large site. Upon inquiry of the Hearing Examiner, Staff appeared to agree with this conclusion. *Testimony of S. McCormick*.

2.6 *The proposed special use is appropriate in the location for which it is proposed, based upon the following criteria: (a) the proposed use does 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 public health, safety and welfare; and (b) the proposed special 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. See TCC 20.54.040(3).

The proposed mine is in an appropriate location, considering the factors listed in TCC 20.54.040(3).

Adjacent Property, Neighborhood Character. The project site is located within 1,242 acres of forest land of long-term commercial significance. *See Findings 1.2 & 1.4; see also Staff Report, p. 4.* The lands to the west, east, and south are also commercial forest lands. *See Finding 1.4.* The land is zoned Long-Term Forestry (LTF), a classification that encourages the commercial use of the timber resource. *See Paragraph 2.5; see also Finding 1.3.* Priority uses in the rural area include forestry and mining. *See Paragraph 2.1.* Mining is allowed as a special use on LTF property. *See Paragraph 2.5.* The comprehensive plan strongly supports the protection of natural resources, such as timber and mineral deposits, from other land uses that may compromise the ability to develop those resources. The project site, being surrounded on all sides by commercial forest land, is located in an appropriate location.

The land to the north is zoned Rural Residential Resource 1/5, which is characterized by residential lots approximately 5 acres and larger in size. *See id.* This zone is intended to “assist in maintaining the commercial timber industry” as well as to protect the public health. *See TCC 20.09.010.* Thus, this zoning designation recognizes the importance of protecting timber resources, while allowing low-density residential uses. As discussed in Paragraph 2.1, there is tension between natural resource uses and residential uses. However, the residential uses of the land to the north do not change the overall character of this area, which is dominated by commercial timber lands. The land to the north has a residential designation, but it is low-density and is given a “resource” classification in recognition of the fact that natural resources uses will also be present. The mining use is therefore consistent with the character of the area. This is especially true given the thirty years of mining use that preceded this application.

Natural Environment. Mining operations have inherent impacts. The timber within the 42-acre expansion area has already been clear-cut. The mining operation will involve drilling, blasting, and excavating the rock. These actions have an impact on the environment. However, it is not possible to extract the valuable mineral deposits without engaging in these activities. One of GMA’s first directives was to designate natural resource lands, precisely because those resources are frequently location-dependent and finite. Public policy recognizes the importance of protecting, developing, and enhancing these resources, as is reflected by the zoning and comprehensive plan designation. The question here, then, is whether the project design, conditions, and mitigation measures ensure that the impacts are not “undue.” Given the nature of the use, the extensive analysis of the proposal, and the broad conditions and mitigation measures required, the impact the natural environment is not “undue,” in the context of natural resource lands.

Traffic Conditions. The proposed mining expansion results in a nominal amount of additional traffic. *See Paragraph 2.2.1.* The public roads have more than sufficient capacity to handle the traffic from this proposal. *See id.* The only mitigation measures required, under the circumstances, are access improvements at the connection between the internal access/logging road and Johnson Creek Road. *See id.* Those access improvements are a condition of approval. *See Condition 44.* Under the circumstances, the proposed use does not have undue impacts on traffic conditions.

Parking. The site is large and remote. There are only eight employees, and the traffic anticipated from the use is relatively small, as previously discussed. There is plenty of space to provide parking to support the proposed use. *See Staff Report, p. 15; Testimony of S. McCormick.* As a result, the Hearing Examiner concludes that there will not be undue impact with respect to parking.

Public Property, Improvements, Facilities, Utilities, or Services. There was no testimony or evidence introduced to suggest that the proposed use unduly burdened public property, public improvements, facilities, utilities or services. No comments from Thurston County or public agencies raised this concern. This is understandable since the mining operation imports water for drinking and dust control and provides portable toilets for sewage. The only public improvements that might be affected are the public roads. However, the proposed development satisfied the concurrency analysis for public transportation. *See* Paragraph 2.2.1. The project conditions address the only anticipated impact by making access improvements at Johnson Creek Road. *See* Condition 44. Given the nature of the proposal, the Hearing Examiner concludes that the proposal does not create a genuine burden on public facilities or services.

Public Health, Safety, and Welfare. For the reasons discussed throughout this decision, the Hearing Examiner concludes that the project, as conditioned, protects and promotes the public health, safety, and welfare. The project, as designed and conditioned, ensures that the mining operation will allow the commercial use of the resource, which benefits the public, while also ensuring that the potential impacts are minimized or mitigated. The discussion of the public health and environmental concerns raised by neighbors, discussed in relation to the SEPA appeals, is also applicable here.

2.7 *The following accessory uses are allowed only when expressly permitted in a special use permit issued by the approval authority: washing, sorting or crushing of rock or gravel, concrete batching, storage or use of fuel, oil or other hazardous materials, and equipment maintenance. Accessory uses are permitted only in conjunction with an existing mineral extraction operation. See TCC 20.54.070(21)(a)(i)-(ii).*

The primary land use activities in forest lands of long-term commercial significance include commercial forest management, mineral extraction, and accessory uses. *See* CP, Chapter 3, Natural Resource Lands, Goal 5, Objective A.1; *see also* Staff Report, p. 4. The current mining operation includes mining of rock, drilling, blasting, rock crushing, stockpiling, importing and exporting of materials, and hauling. *See* Finding of Fact 1.6. The operation also includes the use of mining/construction vehicles, including a mobile fuel truck. *See* Findings of Fact 1.6-1.7. The operation contemplates the use of fuel and oil. *See* Finding of Fact 1.7. The expanded operation, extending to 42 acres, will conduct the same activities. *See* Finding of Fact 1.8. The expanded operation will not include other accessory uses, such as washing or concrete batching. *See id.*

The Staff Report states that the proposed operation includes no accessory uses. *See e.g.* Staff Report, pp. 7 & 36. The Hearing Examiner disagrees. The accessory uses to mineral extraction, as relevant here, include sorting and crushing of rock and the storage and use of fuel and oil. TCC 20.54.070(21)(a)(i)-(ii) specifically provides that these activities are accessory uses that are only allowed pursuant to a special use permit. The comprehensive plan identifies crushing as an accessory use of mining. *See* Staff Report, p. 6 (citing CP, Chapter 3, Natural Resource Lands, Goal 8, Objective A.9).

The LTF provisions do not identify mineral extraction as a primary use in the zone, or describe the uses accessory to mineral extraction. *See* TCC 20.08D.020. However, the LTF provisions reference Chapter 20.54 for the special uses allowed in the zone. *See* TCC 20.08D.025. The LTF provisions also reference Chapter 20.34 as providing additional regulations related to accessory uses. *See* TCC 20.08D.050(1). Chapter 20.34 provides that accessory uses are permitted in any zoning district, unless prohibited or limited in the chapter. *See* TCC 20.34.010.

The Applicant submitted an application for a special use to authorize the expanded mining operation. The application included a description of the various accessory uses that would be conducted, consistent with the existing mining activities. *See* Att. B. Thus, the scope of the proposed use is contemplated by and

would be authorized upon issuance of a special use permit. Therefore, this criterion for a special use is satisfied.

2.8 The project avoids and mitigates the potential impacts on critical areas and habitats consistent with Title 24 of the Thurston County Code.

The project is designed to avoid and mitigate the potential impacts to critical areas and associated habitat or species. For the reasons that follow, the Hearing Examiner concludes that the proposal fulfills the letter and intent of the critical area codes and regulations.

There are ten wetlands and nine streams on or adjacent to the project site. *See* Findings 1.19 & 1.10. All the wetlands and streams have been categorized. *See id.* These classifications determine the applicable buffers to protect these critical areas. The wetlands have buffers of 220-240 feet, and the streams have buffers of 100-150 feet. *See* Findings 1.19 & 1.21. No mining operations are proposed or will take place within the setbacks of the wetlands, streams, or riparian areas. *See* Findings 1.24 & 1.25. No mining-related activity will take place within any critical area buffers. *See* Finding 1.25. No other critical areas were observed on the project site by the project biologists. *See* Finding 1.22.

The project site does not encroach into any shoreline. *See* Finding 1.24. The Deschutes River crosses the northeast corner of the Weyerhaeuser property, but the river is 2,500 feet away from the project site and is outside the associated water basin. *See* Finding 1.26. There is no 100-year floodplain on the project site. *See* Finding 1.24.

The site contains steep slopes which constitute geologic hazard areas under TCC 24.15.010 *et seq.* *See* Finding 1.23. However, mineral extraction is specifically permitted in geologic hazard areas. *See* Table 24.15-1; *see also* Att. R2. Given the nature of mineral extraction, it makes sense that this kind of resource land would be allowed so long as the activity did not threaten neighboring property. There is no genuine concern for this proposal, given the fact that the proposed mining operation is surrounded by commercial forest land. *See e.g.* Finding 1.23.

There are no priority habitat or sensitive or endangered species within or near the project site. The DFW mapping does not identify any priority habitat or species within the mining expansion area. *See* Finding 1.28. The SWIFD map does not identify any streams or occurrences of salmonids on or within the vicinity of the proposed quarry expansion. *See* Finding 1.29. The smaller tributaries on or adjacent to the project site do not support salmonid habitat. *See id.* The closest mapped priority habitat is over 1,000 feet away from the expansion area. *See id.* Of particular note, there are no prairie or pocket gophers on or within the vicinity of the proposed quarry expansion. *See* Finding 1.30. The project biologists did not observe soils suitable for pocket gophers on or near the site, and thus the mine would not impact pocket gophers. *See id.*; *see also* Att. W, p. 6.

The proposal satisfies the general requirements of the Critical Areas Ordinance (CAO). The project is designed to avoid impacts to critical areas, whenever possible, and to ensure no net loss of critical area functions, in furtherance of TCC 24.01.035(A)-(B). The project is designed, first and foremost, to avoid impacts to the critical areas within or near the project site. No mining-related activity will take place within any buffer. A range of precautions will be taken to prevent impacts to critical areas, including stormwater controls, preservation of trees within buffers, erosion control, construction fencing, and critical area signage. *See e.g.* Conditions 7, 8 & 30. An adaptive management plan will ensure that mitigation measures are periodically reviewed adjusted to account for unanticipated impacts to fish and wildlife. *See e.g.* Condition 9. Staff's proposed conditions acknowledged that no impacts to wetlands and streams were anticipated. *See* Staff Report, p. 39 (Condition 6). However, in the event the mining

operation resulted in the loss of any wetlands, the wetlands must be replaced on a 2:1 ratio as mitigation. *See id.*

The project includes appropriate monitoring measures, consistent with TCC 24.01.035(C). The project includes monitoring wells, surface water sampling points, and the parameters and schedules for sampling. *See* Paragraph 2.3.11. The monitoring and sampling requirements are incorporated into the project conditions. *See id.* The monitoring of ground and surface water will take place throughout the life of the project. *See e.g.* Att. A1. As previously discussed, the approaches are subject to adjustment to ensure effectiveness, per the adaptive management plan. These requirements are incorporated into the project conditions. *See e.g.* Condition 29.

The other general requirements of the CAO are also satisfied. TCC 24.01.035(D) requires the operator to provide county personnel with access for purposes of inspections. Such access is therefore required. *See* Condition 19.

The proposed mine expansion also considered and addressed the specific requirements related to wetlands, as set forth in Chapter 24.30. For example, the project fulfills the purposes of the specific wetland regulations, by avoiding and minimizing impacts, as well as ensuring no net loss of habitat. *See* TCC 24.30.005. The relevant wetlands have been delineated and classified by qualified biologists, as reflected in the Critical Areas Report. *See* TCC 24.30.020-030. Based upon that information, buffers for all the wetlands were established. *See* TCC 24.30.035-045.

No mining activity is proposed within the wetland buffers, thus no wetland will be removed or directly impacted by the proposed use. The current proposal does not seek to reduce or reconfigure any wetland buffers. *See* TCC 24.30.050 & .060. The proposed mine expansion area has been clear cut. However, the trees within wetland buffers were preserved to prevent impact to wetland or associated habitat. *See* Finding 1.11. No clearing or grading is proposed within wetland buffers, and thus TCC 24.30.150 is not relevant to this proposal.

If there were impacts to the wetlands, those impacts would occur indirectly, from the failure to protect groundwater or surface water. However, the potential impacts to wetlands have been thoroughly considered. The project is supported by a hydrogeologic analysis, a critical areas report, a drainage report, and a contingency and adaptive management plan. The best management practices and other mitigation measures have been identified for the proposal, consistent with applicable regulations. And there are extensive project conditions to protect groundwater, surface water, and critical areas. In the event any wetland was lost, the operator must mitigate that impact by replacing the lost wetland on a 2:1 ratio. *See* Condition 6; *see also* TCC 24.30.080.

For the reasons discussed above, the proposed mining expansion satisfies the general wetland standards set forth in TCC 24.30.090. The project avoids impacts to wetlands whenever possible, employs best management practices to ensure protections of water and wetlands, and includes extensive conditions to ensure wetlands are protected for the life of the project.

2.9 The proposed mining operation is consistent with Chapter 24.10, regulating critical aquifer recharge areas (CARA). See TCC 24.10.

The site includes CARAs in all three classes, i.e. Category I, II, and III. *See* Finding 1.26. As a result, the proposal must adhere to the requirements of Chapter 24.10 TCC. The general standards of TCC 24.10.030 apply to the uses listed in Table 24.10-1. *See* TCC 24.10.020. The mining of minerals is permitted in Category I, II, and III critical aquifer recharge areas, outside of wellhead protection areas within a 1-year time of travel zone. *See* Table 24.10-1.

The proposed mining operation is permitted under the CARA regulations. The site is not within a wellhead protection area. *See* Finding 1.28. In addition, the County did not determine that the use was prohibited due to any inherent threat to groundwater quality, pursuant to TCC 24.10.030(C). Therefore, the use is allowed so long as the other CARA standards are satisfied.

The required hydrogeologic report was prepared and submitted in support of the proposal, consistent with the requirements of TCC 24.10.030(B). The hydrogeologic report, in conjunction with the Drainage Report, analyzes and addresses the project's potential impacts on base flows of streams and the quantity of ground water flows sustaining the associated wetlands. *See* TCC 24.10.030(B); *see also* Att. A1; *see also* Ex. 14.4c. The proposed mitigation measures are designed to protect groundwater quality, maintain stream flows to protect fish, and to maintain the volume and timing of groundwater flows, as required by TCC 24.10.030(E)(1). *See id.*

The reports submitted in support of the project address the Best Management Practices (BMPs) that will be implemented to mitigate against the potential impacts, consistent with TCC 24.10.030(D). *See* Att. A1, pp. 69-77, 81-83 & 85 (Stormwater Pollution Prevention BMPs); *see also* Ex. 14.4e, pp. 12-15 (Contingency and Adaptive Management Plan BMPs). BMPs are required as conditions of the proposed mine expansion. *See* Condition 3.

The development proposal is consistent with the remaining provisions of TCC 24.10.030. For example, the hydrogeologic report does not indicate that the existing mine or the proposed expansion will result in ground water contamination or reduce the assimilative capacity of any aquifer. *See* Paragraph 2.3.10(f). Thus, the development proposal is considered acceptable pursuant to TCC 24.10.030(J) & (K).

The Staff did not determine and there is no evidence suggesting that the project involves the handling of hazardous materials in excess of quantity thresholds, triggering specific BMPs, a BMP report, or the preparation of a hazardous materials plan under TCC 24.10.030(F), (G) & (I)(2). Similarly, there are no underground tanks at the property requiring decommissioning pursuant to TCC 24.10.030(H). There is no evidence of known spills, leakage, or other release of hazardous materials that need to be remediated under TCC 24.10.030(L).

In addition to TCC 24.10.030, the Staff also referenced TCC 24.10.150 as relevant to this proposal. TCC 24.10.150 sets forth additional requirements related to the mining of sand and gravel. Staff's analysis suggests that the hydrogeologic report and other submissions, along with project conditions, address the matters relevant to TCC 24.10.150. *See* Staff Report, p. 23. However, the Staff Report does not directly comment on how the sand and gravel standards are relevant to the proposed hard rock mine. During the hearing, Staff expressed uncertainty as to whether TCC 24.10.150 applied to this case, since the operation does not involve the mining of sand and gravel. *Testimony of S. McCormick.*

The Hearing Examiner concludes that TCC 24.10.150 is not applicable to this project. The mine is extracting rock, not sand and gravel. *See Testimony of K. Hansen.* "Mineral extraction" is permitted as a special use in the LTF zone. *See* Paragraph 2.5. The term "mineral extraction" is defined to include the removal of sand, gravel and rock, among other things. *See* TCC 20.03.040(84.5). However, the CARA regulations apply different rules for the removal of sand and gravel versus the removal of other minerals. For example, the CARA regulations identify two different types of mining, namely "Mining-coal and minerals" and "Mining-gravel and sand (TCC 24.10.150)." *See* Table 24.10-1. The CARA use restrictions for mining of "minerals" is not the same as for the mining of "gravel and sand." *See id.* Thus, TCC 25.10.150 explicitly governs the mining of gravel and sand, but is not referenced with respect to other "minerals," such as rock. *See* Table 24.10-1.

The Hearing Examiner concludes that the proposal complies with the requirements of the CARA regulations. The project is not governed by the standards specific to sand and gravel, and thus TCC 24.10.150 is not relevant to this proposal.

2.10 The Hearing Examiner concludes that some of the proposed SUP conditions should be modified under the circumstances of this case.

The Applicant argued that the certain project conditions should be deleted or revised. *Testimony of N. Rogers.* With limited exceptions noted in the discussion below, the County did not specifically address the requested revisions. That said, the Hearing Examiner considered the requested changes in light of the record of this case. For ease of reference, the Hearing Examiner’s responses to Applicant’s comments on each condition are provided in the table below.

Condition 13	The Hearing Examiner agrees with the Applicant that references to gravel washing are not appropriate because that activity is not part of this proposal. The Applicant also asserted that the proposal involved no process water. There was no contrary testimony. Even so, the Hearing Examiner was not certain that the project would never generate process water. As a result, the Hearing Examiner retained the condition, but with the qualification that the requirements do not apply if no process water is generated.
Conditions 14 & 15	The Applicant requested that these conditions be deleted because they simply repeat existing legal requirements. However, the Applicant did not object to the content of the conditions or contend that any of the language was contrary to the applicable legal requirements. The Hearing Examiner concludes that there is no persuasive reason to remove these conditions. The Hearing Examiner also agreed with Mr. Hansen that explicit conditions are appropriate and useful for enforcement purposes, even if they largely repeat existing legal requirements.
Condition 16	The Applicant requested that the condition be modified to acknowledge that the frequency of noise monitoring may be adjusted, per TCC 17.20.110. Since this change merely reflects the language of the code, the Hearing Examiner concludes that this change is reasonable and should be made.
Condition 17	The Applicant contended the condition, regarding operating hours, was confusing. The Hearing Examiner disagrees. The condition closely mirrors the language of TCC 17.20.115. That said, the Hearing Examiner removed the reference to asphalt plants, as the SUP does not authorize that use.
Condition 18	The Applicant contended that fencing was not required to protect safety or health at this remote site, and therefore the condition should be deleted or revised to state that fencing is not necessary. Given the remoteness of the site, and the surrounding forest lands, the Hearing Examiner agrees that fencing is not necessary for this site. No specific reason was suggested to delete the remainder of Condition 18 relating to signage, so that part will be retained.
Conditions 25 & 34	The Applicant requested that these conditions be updated to reference the current report(s) and updated data. The Hearing Examiner believes these conditions are sufficient as written and therefore these conditions were not changed.

Condition 29	The Applicant requested that this condition be removed because the baseline assessment has been completed. The Hearing Examiner agrees. This condition has been removed.
Condition 31	The Applicant pointed out that this condition is a repeat of Condition 9 and should be deleted. The Hearing Examiner agrees and has deleted this condition.
Conditions 32 & 37	The County contended that riparian management zones required by code are outside the standard buffers, although these zones may not apply to the streams closest to the mine. <i>Testimony of H. Tchaekofske</i> . The Applicant requested a modification to Condition 32 to clarify that mining activity will take place outside any critical areas or riparian management zones. <i>See Applicant's Closing Argument</i> , p. 15. The Hearing Examiner revised Condition 32 to clearly state that mining activities will not take place within riparian management zones. Condition 37 was deleted because the proposal does not include clearing or grading in a riparian management zone.
Condition 33	The Applicant argued this condition should be deleted because it is intended to apply to buildings. The County argued that construction buffers are intended to protect critical areas from impacts of operating construction vehicles and equipment, and thus are not tied to the construction of buildings alone. <i>Testimony of H. Tchaekofske</i> . TCC 24.01.035(G) states that "structures or uses requiring a permit" must be set back fifteen feet from sensitive area buffers. Thus, the construction setback applies not only to a "structure" but to a "use" requiring a permit. The type of permit is not initially specified. If there was no other clarifying language, the Hearing Examiner would agree with the County. However, the paragraph ends by stating that structures and uses "not requiring a building permit are required to observe the setbacks and other requirements of this title." <i>See TCC 24.01.035(G)</i> . Reading the paragraph as a whole, the Hearing Examiner concludes that the "permit" referred to is a "building permit." If no building permit is required for the use, then the standard setbacks and other requirements (such as standard buffers) apply. The mining operation does not require a building permit. Therefore, the construction setback does not apply. Condition 33 was therefore deleted.
Condition 34	The Applicant requested that this condition be replaced with language stating that the County approved the relevant reports. The Hearing Examiner agrees that the condition should be modified, but that it should be worded to make implementation and compliance with the monitoring and adaptive management plans an obligation of the mining operators. The condition was revised accordingly.
Condition 35	The Applicant contended this condition should be deleted because it requires the submission of reports that have already been provided. The Hearing Examiner agrees and has previously concluded that the project submissions are sufficient. This condition was therefore deleted.
Condition 38	The Applicant argues that the code does not require that the entire site be designated as mineral lands and therefore this condition should be deleted. <i>Testimony of N. Rogers; see also Applicant's Closing Argument</i> , p. 11. The Hearing Examiner agrees. <i>See Paragraph 2.2.5</i> . Therefore, this condition was removed.

Condition 39	The Applicant contended that the recital stating that forest lands constitute agriculture was unnecessary. The Hearing Examiner agrees. <i>See</i> Paragraph 2.1. Therefore, that portion of the condition was deleted.
Condition 40	The Applicant requested clarification of the proposed condition related to maintenance of a natural forested buffer around the perimeter of the site. The Hearing Examiner agrees that some revision to this condition is appropriate. To the east, west, and south are commercial forest lands with no nearby residents or owners to affect. There is no need for a condition requiring buffering in those directions. The potentially useful buffer would be along the ridgeline/access road. <i>Testimony of C. Aldrich.</i> The Applicant confirmed that a 10-20 foot natural forest buffer could be maintained in that location to provide some additional buffering. <i>See id.</i> The Applicant’s closing argument make a similar suggestion. The Hearing Examiner revised the condition accordingly.
Condition 42	The Applicant requested that the condition requiring the removal of all piles of concrete and waste be clarified to except materials permitted by law to remain. The County explained the background for this condition, noting that the mining operator must either remove the material or get a permit to store the material. <i>Testimony of K. Overton.</i> Under the circumstances, the Applicant’s requested clarification is acceptable, because there may be a legal avenue to allow the storage of such materials. <i>See id.</i> As a result, the condition was revised as requested.
Condition 50	The Applicant objected to the latter part of the Condition 50 referring to the potential requirement to obtain a construction stormwater permit from DOE, as this is not required for this proposal. The County agreed that a construction stormwater permit was not required for this project. <i>Testimony of A. Saint.</i> Therefore, the condition was modified to delete the reference to the construction stormwater permit.
Condition 51	The Applicant argued that this condition should be revised to state that the Hearing Examiner, rather than the Planning Department, is the entity that approves the application. The Hearing Examiner agrees and has revised the condition accordingly.
New Condition	The Hearing Examiner agrees with Applicant that a new condition ensuring compliance with TCC 17.20.200(H) is appropriate. <i>See</i> Applicant’s Closing Argument, p. 12; <i>see also</i> Paragraph 2.3.10(h). Therefore, a new condition was added. <i>See</i> Condition 46.
New Condition	The Hearing Examiner agrees with Alexander and the Applicant that the project conditions should include a requirement for an inadvertent discovery plan, in order to protect cultural resources that may be present on the site. A new condition was prepared to fulfill this intent. <i>See</i> Condition 47.

For ease of reference, the Hearing Examiner is including Attachment B to Decision, showing the changes that the Hearing Examiner made to the project conditions included in the MDNS and proposed by Staff.

FINDINGS AND CONCLUSIONS – SEPA APPEALS

The party appealing a decision under SEPA bears the burden of proof. *See Dioxin/Organochlorine Cener v. Pollution Control Hearings Board*, 131 Wn.2d 345, 366, 932 P.2d 158 (1997); *see also Moss v. City of Bellingham*, 109 Wn.App. 6, 23, 31 P.3d 703 (2001). Since the burden of proof rests on the appellant, the Courts have held that the “clearly erroneous” standard of review should govern SEPA review proceedings. *See Cougar Mountain Associates v. King County*, 111 Wn.2d 742, 749, 765 P.2d 264 (1988). “A decision is clearly erroneous when the court is ‘left with the definite and firm conviction that a mistake has been committed.’” *See Moss v. City of Bellingham*, 109 Wn.App. at 13-14. An agency’s decision to issue a DNS and not to require an EIS is accorded substantial weight. *See id.* A threshold determination is considered “clearly erroneous” if there is an absence of a record sufficient to demonstrate that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA. *See Norway Hill Pres. & Prot. Ass’n v. King Cty. Council*, 87 Wn.2d 267, 276, 552 P.2d 674 (1976).

Alexander SEPA Appeal

3.1 The project should not be conditioned or denied based upon the alleged lack of a county permit for the existing mining operation.

Alexander points out that the existing mining operation did not receive a county permit. *See Ex. 3*, p. 12. According to Alexander, the operators do not have grandfather rights to expand the mine. *See id.* Further, the existing mining operation should be required to comply with the long-term forestry and CARA standards. *See id.* The Hearing Examiner disagrees with these contentions.

The mining operator was not required to obtain a county permit when the operation commenced. The Applicant obtained the only authorizations required to mine the site from DNR. In addition, an MDNS for the existing mine was issued in 2019, and that determination was not appealed on this record. *See Att. M.* Thus, the mining operation was legal at commencement and may be concluded in accordance with the applicable conditions and DNR standards. The current application does not require the County to re-adjudicate the original mining proposal. The proposal to expand the mining operation is subject to current laws and regulations, as discussed throughout this decision. The mining expansion does not rely on any grandfathered rights to legally justify the expansion. As a result, the Hearing Examiner declines to further condition or deny the proposal on such grounds.

3.2 The project should not be conditioned or denied based upon past code enforcement actions.

Alexander argues that the current mining operation was the subject of multiple code enforcement actions by WDOE “for water quality monitoring violations and lack of compliance with” pollution controls and permit standards. *See Ex. 3*, p. 13. Alexander argues that these violations represent a “pattern of noncompliance” which suggest the operation should be subject to greater environmental analysis. *See Ex. 3*, p. 13; *see also Ex. 2K.* The Hearing Examiner disagrees.

While a history of code compliance issues is concerning, the compliance issues were apparently resolved. The WDOE comments made no reference to code violations and did not request any conditions or restrictions based upon the alleged history. *See Atts. G2, H2, & C3.* Had the pattern of noncompliance continued or demonstrated that WDOE requirements would be ignored, then some comment or condition from WDOE would be expected. County officials, including those in consultation with WDOE, did not raise concerns about enforceability of project conditions due to an alleged history of noncompliance. *See e.g. Testimony of K. Overton.* Under the circumstances, the Hearing Examiner concludes that past

compliance issues have been addressed and the history does not suggest that the conditions attached to this decision will be ignored.

3.3 The County properly considered the environmental factors and impacts and therefore complied with SEPA.

Alexander contended that the County did not consider the environmental factors and impacts in compliance with SEPA. *See* Ex. 3, p. 14. The numerous concerns raised by Alexander are discussed below.

3.3.1 The potential groundwater and aquifer impacts of the proposed mining operation were properly analyzed and considered by the County.

Alexander asserted that mining could impact the regional water table and perched aquifer that feed local wells and wetlands. *See* Ex. 3, p. 14; *Testimony of I. Alexander*. Alexander argued that quarries can act as large drains on aquifers, lowering the water table and affecting wells on neighboring property and surface waters. *See* Ex. 3, p. 16. According to Alexander, this risk could arise if the quarry “intercepts the regional aquifer.” *See id.* Alexander also asserted that the mining operation “will inevitably alter groundwater recharge and flow patterns,” thereby impacting nearby wetlands. *See* Ex. 3, p. 15.

The Applicant submitted a complete and thorough hydrogeologic analysis of the site that satisfied the code requirements. *See* Paragraph 2.3.10. The required analysis and modeling were completed. *See id.* The project conditions include ongoing monitoring of water levels. *See id.* In addition, the stormwater system is designed to ensure that pre-development flow is maintained, thereby recharging the nearby wetlands. *See* Paragraph 2.3.3. The mining operation is not anticipated to have any impact on the quantity of water available in the drinking water wells to the north. *See* Paragraph 2.3.10(f). With the possible exception of one small portion of the southwest corner of the site, the mining will take place above the water table. *See* Paragraph 2.3.10(h). Even if the water table is intercepted in that location, the project hydrogeologist concluded that the impacts will be nominal and easily addressed. *See id.*

Given the evidence in this record, the Hearing Examiner concludes that the MDNS was not clearly erroneous for failing to adequately analyze the risks to groundwater.

3.3.2 The County did not clearly err by overlooking the potential impacts to water quality.

Alexander asserted that explosive residue from blasting, mobilized sediment, exposure to acid-generating rock strata could contaminate groundwater. *See* Ex. 3, p. 16. There was no evidence that blasting would cause contamination (residue from blasting) or release contaminants from acid-generating rock. There was no expert testimony supporting this theory, to explain the phenomenon, the degree of risk, how this particular operation causes this result, or the like. To establish this theory would require expert testimony and specific data, both of which are lacking in this record. The Hearing Examiner concludes that this claim is speculative. The sediment concern is thoroughly addressed by stormwater facilities and erosion control measures. *See e.g.* Paragraph 2.3.3.

3.3.3 There is no evidence that blasting results in significant impacts that need to be mitigated.

Alexander asserted that the MDNS did not address the risks of blasting. However, there is no evidence that blasting poses a genuine risk of harm. The first concern with blasting is noise. *See e.g.* Ex. 2P. However, blasting is exempt from the noise regulations during daytime hours. *See* WAC 173-60-

050(1)(c); *see also* TCC 17.20.110(A) (incorporating WAC 173-60 by reference). Undoubtedly this is because the activity inherently includes brief instances of noise that spike above the noise thresholds. The Applicant estimated that blasting would occur 1-2 times per year, 3 times at the most. *Testimony of N. Rogers*. There were no claims to the contrary, based upon past operations or the current proposal. Thus, the frequency of these brief spikes in noise is very low. The infrequency of blasting, coupled with the noise analysis for the mining operation, would appear to rule out noise from blasting as a significant environmental concern. *See* Paragraph 2.3.8.

Ms. Alexander testified that blasting could affect drainage and redirect the flow of water. *Testimony of I. Alexander*. Mr. Gulbranson predicted that blasting would cause dewatering and drying out of water supplies. *Testimony of K. Gulbranson*. These folks do not have the expertise necessary to analyze the issue or offer such opinions. However, the County Hydrogeologist does and he provided some support for the claim. Mr. Hansen testified that blasting opens fractures which can make the water move faster. *Testimony of K. Hansen*. However, he also testified that the blasting can cause changes or sediments that trap or block water as well. *See id.* The Hearing Examiner concludes that the effect of blasting on groundwater flow can be difficult to predict, at least with full certainty. This is the reason for the monitoring wells and other mitigation measures that address the potential impacts to ground and surface water. Those measures are sufficient to address the potential impacts, as discussed extensively in other parts of this decision.

Alexander contended that blasting can cause vibration that shakes windows or structures, damages walls and foundations, startles pets, and causes anxiety and discomfort for residents. *See* Ex. 3, p. 21. Ms. Gulbranson testified that she was worried about “constant noise,” “constant vibration,” and “constant booms” from the mine. *Testimony of T. Gulbranson; see also* Ex. 2D. Others testified that even if blasting only occurred 2-3 time per year, the health and welfare impacts would be significant. *Testimony of K. Gulbranson & P. Kline*. The Hearing Examiner understands the concerns, but does not agree.

It was undisputed that blasting would be very infrequent, i.e. only 2-3 times per year. The low frequency of blasting does not support the claim that the neighbors will experience “constant vibration” or “constant noise” from the site. There was no specific evidence that blasting caused actual damage to any property in the past, or that future operations posed a genuine risk of such harms in the future. There was only speculation from lay witnesses expressing fears and worries about blasting activities. Projects cannot be conditioned or denied based upon generalized fears of neighbors. *See Sunderland Family Treatment Services v. Pasco*, 127 Wn.2d 782, 903 P.2d 986 (1985).

To support a claim that blasting would cause enough vibration or noise to damage property or create significant health risks, Alexander would need to present specific data and expert testimony explaining how blasting at this site could have significant impacts, given the frequency, force, distance, site conditions, etc. The Hearing Examiner concludes that Alexander’s claims regarding blasting and its effects are speculative and lack support.

3.3.4 The County did not fail to properly consider air quality impacts during its environmental review.

Alexander asserted that the environmental review did not adequately consider the air quality impacts of mining, in particular to mining workers and nearby residents. *See* Ex. 3, pp. 18-20; *see also* Ex. 2N. The Hearing Examiner disagrees.

The regulatory authority with respect to potential air impacts is the Olympic Regional Clean Air Agency (ORCAA). Per County comments, the Applicant submitted an application for a permit from ORCAA. *See* Att. F2, p. 1. The permit has not yet been issued because ORCAA requires county

approvals prior to issuing its permit. *See id.* The County has acknowledged that the permit application has been made, in satisfaction of County comments on the project. *See* Att. X1, p.1. The application fulfills the specific count standards for a mining operation, i.e. TCC 17.20.100. *See id.*; *see also* Paragraph 2.3.7. The project conditions require the operator to satisfy all standards and mitigation measures required by ORCAA, which may include water trucks or sprinklers for dust control. *See id.*; *see also* Condition 13.

Alexander asserts there could be myriad of health and environmental impacts, such as reduced air quality and exposure to dust (causing chronic respiratory irritation, silicosis, and cancer). *See* Ex. 3, pp. 18-20; *see also* *Testimony of P. Kline, K. Gulbranson, & T. Gulbranson*; *see also* Ex. 2Q. However, there is no specific evidence or expert testimony to support these claims. For example, there is no expert analysis regarding dust exposure, the composition of the dust, the health effects, the probability of exposure given the proposed operation, how the design or scope of the operation causes impacts that cannot be mitigated, or similar information. The record also lacks any empirical evidence that blasting and mining at the site over the preceding thirty years created health risks for residences almost 2,000 feet away and buffered by topography and commercial forest. There is no specific information upon which the Hearing Examiner can assess Alexander's claims.

It is not sufficient for Alexander to assert that negative impacts *could* occur. Speculative or remote impacts are not a proper basis for making SEPA decisions. *See Boehm v. City of Vancouver*, 111 Wn.App. 711, 729, 47 P.3d 137 (2002) (holding that city was not required to consider non-specific, cumulative impacts of a proposed gas station because the alleged harms were speculative and therefore did not need to be addressed in the SEPA review). The Hearing Examiner concludes that Alexander's claims regarding vibration are speculative and lack support.

3.3.5 *The County did not fail to consider the environmental impacts to species and habitat.*

Alexander claims that the environmental review failed to consider federal and state endangered species. *See* Ex. 3, p. 23. Ms. Alexander further testified that the analysis in the record did not account for WDFW concerns. *Testimony of I. Alexander*. The Hearing Examiner disagrees.

WDFW mapping does not show any priority habitat or species on the site. *See* Finding 1.29. In addition, WDFW provided no comments and raised no concerns in this regard. *See id.* SWIFD mapping provides that there are no streams with salmonids on or adjacent to the site. *See* Finding 1.30. The site contains no pocket gophers, which was raised as a specific concern in this area. *See* Finding 1.31. Moreover, the site has been analyzed by project biologists for the presence of sensitive and endangered species, and none were found. *See* Paragraph 2.8.

Alexander did not establish that endangered or sensitive species exist on the site, or that sensitive habitat would be impacted. The information in the record, supported by expert opinions of biologists, states otherwise. The fact that site "could" theoretically contain habitat is not sufficient to demonstrate that the MDNS was clearly erroneous. *See* Ex. 3, p. 23.

3.3.6 *The County did not fail to address impacts from truck traffic to and from the proposed mining operation.*

Alexander asserts that truck traffic will impact air quality, contribute greenhouse gas, add noise, and impact public roads, and thus the environmental analysis was flawed. *See* Ex. 3, pp. 24-26. The Hearing Examiner disagrees. The traffic generated by the proposed mining expansion is relatively small and will not have significant impacts on the transportation system. *See* Paragraphs 2.2.1 & 2.3.6. Trucks are a source of emissions which can impact air quality and contribute greenhouse gas to some degree.

However, there is no evidence that these impacts will be significant, given the scope of this proposal. Alexander cited no rules or regulations describing the proper controls or mitigation measures for vehicle exhaust or greenhouse gas. The potential noise impacts from truck traffic were specifically addressed in the noise analysis, which concluded that noise would not be significant and, in any case, would not exceed the legal thresholds. *See id.* The MDNS was not clearly erroneous for failing to consider the potential impacts of truck traffic.

3.3.7 *The MDNS did not overlook the concerns of area tribes regarding potential impacts to cultural resources.*

Alexander contended that cultural impacts of the project were not properly addressed by the MDNS because the concerns of area tribes were not addressed or considered. *See Ex. 3, p. 24.* Alexander suggested that the Nisqually Tribe's comment letter, dated September 3, 2020, requesting a cultural resources survey, was ignored. *See id. (Exhibit 5 to Motion); see also Att. O2.* Alexander also contended that Squaxin Island Tribe did not receive sufficient notice to analyze the impacts and comment on the proposal, as reflected in the tribe's email dated May 19, 2023. *See id. (Exhibit 6 to Motion); see also Ex. 2L.* Under the facts in this record, the Hearing Examiner disagrees.

The record confirms that the Nisqually Tribe's comment was addressed. Specifically in response to the Nisqually Tribe's letter, the project planning manager submitted a Technical Memo, dated May 3, 2021, to Thurston County Development Services. *See Att. M2, p. 25.* In the memo, the project planning manager explained that he reviewed resource data from the Washington State Department of Historic Preservation (DAHP), DNR Puget Sound region, and the landowner for any indication of cultural resources or artifacts. *See Att. M2, p. 25 (Memo of C. Aldrich).* He determined that the extraction/grading activities will occur in Very Low/Low and Moderate-risk for cultural resources, under DAHP's model. *See id.* None of the information reviewed suggested a likelihood of the presence of cultural resources. *See id.* In addition, the project planning manager pointed out that the area of existing/expanded mining are "highly disturbed," reducing the likelihood of containing cultural resources. *See id.* As a result, he suggested the BMPs or an inadvertent discovery plan were appropriate. *See id.*

After considering the response, on June 10, 2021, the Nisqually Tribe withdrew its request for a cultural resource survey, so long as the described boundaries were followed. *See Att. M2, p. 26.* The record contains no indication that the Nisqually Tribe disputed any part of the project planning manager's analysis. In addition, on May 13, 2025, the Nisqually Tribe was notified of the MDNS for purposes of making further comments. *See e.g. Ex. 2L, pp. 1-2.* The Tribe did not submit further comments on the matter, or raise any new concerns about potential impacts to cultural resources.

The Squaxin Island Tribe's email of May 19 email expresses frustration about a lack of engagement and limited time to analyze and comment on project impacts. *See Att. O2.* Notably, the Tribe's email did not identify any anticipated impacts, request a cultural resources survey, or request any other project condition. *See id.* Rather, the Tribe asked for a meeting to discuss the mining plans, timeline, and mitigation measures. *See id.*

There is no indication in this record that, following any meetings or discussions with the County, that the Tribe determined that a cultural resources survey was needed or justified. The Tribe had previously been notified of the proposal and raised no concerns. In a comment dated February 11, 2021, the Squaxin Island Tribe advised: "We have no specific cultural resource concerns for this project." *See Att. M2, p. 26.* Since that time, the Tribe has not submitted specific comments suggesting that a cultural resources survey is necessary. However, on May 27, 2025, Tribe asked for a copy of the cultural resource report, despite the prior comment advising that it had no concerns. *See Ex. 2E.*

There was no testimony presented at the hearing from either the Nisqually Tribe or the Squaxin Island Tribe. Neither submitted evidence, before or during the hearing process, suggesting that a cultural resource survey was needed under the circumstances.

The Hearing Examiner concludes that the MDNS did not overlook or ignore the concerns of the Tribes. The Tribes did not raise specific concerns or insist upon a particular condition or remedy. Therefore, there was no error by the lead agency.

3.3.8 *The MDNS was not clearly erroneous for failure to include a substantive analysis of alleged socioeconomic impacts.*

Alexander contended that the MDNS failed to include a “substantive analysis of socioeconomic impacts on local residents,” such as impacts on property values, rural character, residents’ ability to use/enjoy property. *See Ex. 3, p. 26; Testimony of I. Alexander; see also Exs. 2J & 2P.* The Hearing Examiner rejects the suggestion that the County or the Applicant was required to complete this type of analysis.

In support of its argument, Alexander cites only to RCW 43.21C.020. This provision is a declaration of legislative policy, not a set of operative provisions for evaluating the impacts of an individual application. A general legislative policy declaring that state government intends to cooperate with federal and local authorities to fulfill social and economic objectives does not project conditions based upon socioeconomic concerns. It is a policy making directive for legislative or rulemaking functions.

Alexander did not identify or discuss any specific regulatory provision or rule requiring a socioeconomic analysis under SEPA. In addition, no specific evidence was submitted by Alexander to substantiate any alleged socioeconomic impacts, such as loss of property value. *See Concerned Citizens of Hosp. Dist. No. 304 v. Board of Comm’rs of Publ. Hosp. Distr. No. 304, 78 Wn.App. 333, 897 P.2d 1267 (1995)* (remote impacts and impacts on property values need not be considered under SEPA). These claims were speculative and unsupported.

3.3.9 *The MDNS was not clearly erroneous due to the alleged failure to include conditions designed to protect children.*

Alexander claimed that SEPA directs agencies to consider impacts to children. *See Ex. 3, p. 27.* Alexander argued that the MDNS clearly erred by not including “child-specific protections.” *See id.* The Hearing Examiner disagrees.

Alexander did not reference any provision or regulation implementing SEPA that requires agencies to analyze impacts to a specific class of person. To the Hearing Examiner’s knowledge, not such authority exists. Alexander refers to WAC 197-11-444 for the proposition that impacts to schools must be considered. *See Ex. 3, p. 27.* Alexander suggested that “dust from the quarry might affect a nearby school, daycare, or homes with children who play or learn outside.” *See id.; see also Testimony of T. Gulbranson.* However, the nearest homes are at least 2,000 feet from the proposed quarry boundaries. No information was submitted to show that there are schools nearby, other than some testimony that some families engaged in home schooling. *Testimony of T. Gulbranson.* No evidence was presented to show how the mining operation would actually impact schools, and no school officials offered comments or testimony to substantiate such impacts. Moreover, there was no specific evidence demonstrating that there were unique impacts on children. The unsupported assertion that dust or pollutants might effect the health of children is not clear or convincing evidence under the law.

Finally, it should be emphasized that the proposal includes conditions to protect air quality. The project must obtain the necessary permits from ORCAA in order to operate. *See* Paragraph 3.3.4. The project also implements best management practices to control impacts, such as watering to control dust. *See* Finding 1.12; *see also* Condition 13.

3.3.10 The MDNS was not clearly erroneous due to the alleged omission of climate change concerns from the SEPA checklist.

Alexander argued that the SEPA checklist completed by the Applicant “violated the law by failing to consider climate.” *See* Ex. 3, p. 30. Alexander insisted that the lead agency must consider “climate” when making a threshold determination pursuant to WAC 197-11-444(1)(b)(iii). *See id.* According to Alexander, the form of the SEPA checklist was flawed because it did not include the words “climate,” “global warming,” or “GHG.” *See id.* Finally, Alexander contended that the removal of forest land from production would contribute to global warming because forests are a key carbon sink for greenhouse gasses. *See id.* The Hearing Examiner rejects these claims, for at least three reasons.

First, the SEPA rules require the County to utilize the SEPA checklist substantially in the form found in WAC 197-11-960. *See* WAC 197-11-315(1) (Environmental Checklist); *see also* WAC 197-11-714(1) (defining “Agency”). That form, set forth in full in the SEPA rules, does not include any sections related to greenhouse gasses or climate change. *See* WAC 197-11-960. These provisions of the SEPA rules are adopted by reference in Thurston County. *See* TCC 17.09.020 (Adoption by reference). Thus, the Applicant completed a SEPA checklist that was consistent with the SEPA rules enacted by the Department of Ecology and adopted by reference in Thurston County.

Second, the Applicant is not responsible for the topics covered by the environmental checklist. As stated above, the checklist was incorporated into the SEPA rules. Any challenge to the omission of climate change from the form would properly be lodged in another forum, such as a separate court challenge to the rulemaking process. Any alleged flaw in the checklist itself is not a proper basis to challenge an individual application, such as a special use permit. The Applicant’s obligation is to follow the rules, not to correct alleged omissions from those rules.

Third, there are no SEPA rules or regulations that require the Applicant to analyze or mitigate alleged impacts related to climate change. It is true that “climate” is an element of the environment, as Alexander points out. *See* WAC 197-11-444(1)(b)(iii). However, this does not mean that the project must be analyzed for alleged contributions to climate change. To the Hearing Examiner’s knowledge, there are no regulations or statutory provisions that require climate change analysis related to this kind of proposal. Alexander cited to none. In the absence of specific citation to authority on this issue, and an explanation as to how to apply any such rules to this case, the Hearing Examiner will not consider the claim further.

3.3.11 The MDNS was not clearly erroneous for failure to adequately address land use impacts or planning compliance.

Alexander alleges the MDNS failed to consider the proposal’s inconsistency with the comprehensive plan and the zoning standards. *See* Ex. 3, pp. 26-27. The Hearing Examiner disagrees. The proposal is consistent with the land use designation of the property and the policies supporting that designation. *See* Paragraph 2.1. The proposed mining operation is permitted in the LTF zone as a special use in the zone and satisfies the zoning requirements, as conditioned. *See* Paragraph 2.5. All of the requirements for a special use permit were satisfied. *See* Paragraph 2.3. Moreover, as discussed throughout this decision, the potential impacts of the project are addressed through appropriate mitigation measures, consistent with SEPA. The Hearing Examiner concludes that the County did not overlook the policies or provisions of

any land use plans or zoning provisions. Therefore, the County did not clearly err in issuing the MDNS on such grounds.

3.4 The MDNS is not clearly erroneous because of allegedly insufficient or incomplete answers in the SEPA checklist.

Alexander argues that certain checklist answers were vague or incomplete and therefore the environmental analysis was fundamentally flawed. *See e.g. Testimony of I. Alexander & L. Viik; see also Exs. 2K & 2M.* While the answer in a checklist are important, the fundamental requirement is the disclosure of sufficient information to allow a proper evaluation of the environmental effects of a proposal. The lead agency can ask for more information, gather its own information, or take other steps to ensure that the data is adequate to complete its review.

An MDNS is not clearly erroneous merely because a checklist is not perfect. Rather, a checklist need only provide information “reasonably sufficient to evaluate the environmental impact of the proposal.” WAC 197-11-315; *Anderson v. Pierce Cty.*, 86 Wash. App. 290, 301, 936 P.2d 432, 438 (1997). Even if some details in the checklist are left out or are insufficient, the project is not evaluated solely based on the checklist answers. The record of this case was developed over a period of years, resulting in the submission of a great deal of information, including clarifications to the proposal. The checklist is an important first step in the review, but it is the beginning of a potentially long process, as is evident here. In the end, the proper subject of the appeal is the MDNS, not the checklist.

The County had more than sufficient information to make a threshold determination in this case. The checklist was reasonably complete to facilitate the environmental review. Therefore, the MDNS was not clearly erroneous.

3.5 The threshold decision was not clearly erroneous because it violated the SEPA policy against piecemeal decision-making.

Alexander argued, in support of the motion for summary judgment, that the project violated the prohibition in the SEPA rules against “piecemeal” decision-making. *Testimony of I. Alexander.* The Hearing Examiner disagrees.

The SEPA rules state that proposals or parts of proposals “that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document.” *See* WAC 197-11-060(3)(b). Proposals include parts that are closely related when they cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously, or they are interdependent parts of a larger proposal which depend upon the larger proposal to justify their implementation. *See id.*

The SUP will only authorize mining within a 42-acre area. That 42-acre site is located within a defined area of 228 acres. However, no mining may occur outside of the 42 acres under this SUP. The project conditions provide that any mining proposal made in the future, outside the 42 acres, must obtain its own SUP. *See* Condition 26. This will trigger its own SEPA review, as the Applicant conceded. The proposed expansion is not contingent upon the Applicant obtaining the right to mine outside the 42 acres, or to mine the entire 228 site. Nor is the 42 acre mining site interdependent with a larger proposal, because a larger mining operation is not required to properly complete the development or operate the expanded mine.

The rule against piecemeal decision-making is intended to prevent a developer from breaking a proposal into smaller parts, and thereby avoid environmental review of all the relevant parts of what is

really a larger project. That is not happening here. The whole proposal is on the table. That is true, even though the Applicant undoubtedly has a long-term intention to completely mine the resource in the coming years or decades. As the parties discussed, the mining project has about a 30-year horizon. Any future proposals will require their own permits and separate SEPA review, and will be evaluated when they are ripe for review. The MDNS was not clearly in error for not considering potential, future mining activity, especially when there is no specific proposal to consider, and any such proposal is likely to be years if not decades into the future.

Applicant's SEPA Appeal

The Applicant appealed the MDNS alleging that several of the conditions imposed pursuant to SEPA were clearly erroneous and should be revised. In particular, the Applicant's objected to project conditions 1, 2, 3, 5, 6, and 7. The Hearing Examiner's analysis of the Applicant's arguments with respect to challenged conditions is provided below.

4.1 The Hearing Examiner agrees that Condition 1 should be deleted because it is not based upon adopted County standards and does not set forth terms that are reasonable or capable of being accomplished.

The Applicant contended that Condition 1, discussing requirements for stormwater control and modeling, should be deleted because, among other things, the condition does not identify adopted SEPA policies to support the condition or establish a "goalpost" that clearly demarks when the submission of information will be considered sufficient. *See* Att. G3, p. 5. For the reasons that follow, the Hearing Examiner agrees that Condition 1 should be deleted.

An application for mineral extraction and its accessory uses must comply with TCC 17.20.040 through 17.20.270. *See* Paragraph 2.3. Chapter 17.20 provides that drainage shall be controlled in accordance with Chapter 15.05 TCC and the DDECM. *See* Paragraph 2.3.3. Chapter 15.05 TCC contains no standards³ for controlling drainage. Instead, it adopts the 2022 Edition of the DDECM by reference, in full. *See* TCC 15.05.010. Thus, the engineering requirements for drainage systems serving a mining operation are set forth in the DDECM.

The Hearing Examiner concludes that Condition 1 is clearly erroneous for the following reasons. The project engineer explained, in detail, how the proposed drainage system was designed to comply with the requirements of the DDECM. *Testimony of R. Balmelli; see also* Paragraph 2.3.3. The other conditions also confirm that the drainage designs must comply with the DDECM. Thus, the project design and conditions both conform to the County's adopted drainage standards, and those standard explicitly apply to mining operations.

Condition 1 states that the "existing modeling" shall be corrected with respect to numerous parameters, such as soil type, slopes, soil thickness, etc. Condition 1 also calls for "adaptation of other WWHM/HSPF parameters appropriate for the mountainous post reclamation mine." Finally, Condition 1 suggests that if such modeling proves insufficient, "a different model may be required."

The Hearing Examiner concludes that the condition is clearly flawed. The premise of the condition is that the "existing modeling" is inappropriate for a hard-rock mine in mountainous terrain. *Testimony of K. Hansen.* The record does not support this premise. The site was modeled using WWHM2012, the methodology required by the DDECM. *See* Paragraph 2.2.3. The modeling followed the most recent

³ The remainder of Chapter 15.05 TCC is focused on violations, penalties, financial guarantees, and other administrative matters. *See* TCC 15.05.020-070.

requirements of the WDOE and the DDECM. *Testimony of R. Balmelli*. The project engineer also confirmed the methodologies used to design the drainage system have been successfully employed at numerous mines, including hard-rock mines and mines in mountainous territory. *See id.*

The County hydrogeologist raised genuine and understandable concerns about the project modeling, and stated there were other models that could be employed. *Testimony of K. Hansen*. However, no specific model was identified, and no counter-analysis under an alternative model was submitted. Regardless of that, the engineering standards and required modeling are dictated by the DDECM. The required modeling was utilized here. A condition stating that a “different model may be required” is not reasonable. There is no way for an applicant to analyze or understand what is being required. And there is no way to judge whether such a requirement is capable of being accomplished, because the alternative model has not been specified.

4.2 Conditions 2 and 3 are consistent with the project engineer’s designs and therefore should not be modified.

The Applicant contended⁴ that Conditions 2 and 3 are clearly erroneous because they require stormwater modeling and controls up to a 100-year storm event, rather than up to a 50-year storm event stated in the DDECM. *See Att. G3, p. 7*. However, the drainage report states that all stormwater conveyance systems will be sized to accommodate the 100-year storm flows. *See Att. A1, p. 23; see also Paragraph 2.3.3*. In addition, the project engineer testified that the drainage facilities were designed to the 100-year peak flow, and that this design satisfied the most recent requirements of WDOE and the DDECM, and thus would protect downstream wetlands. *Testimony of R. Balmelli*. Conditions 2 and 3 require no more than what the project was designed to handle, and the engineer confirmed that the designs were consistent with the applicable standards. As a result, Conditions 2 and 3 are not clearly erroneous and do not require modification.

4.3 The Hearing Examiner agrees that Condition 5 should be deleted because it is not based upon adopted County standards and does not set forth terms that are reasonable or capable of being accomplished.

The Hearing Examiner concludes that Condition 5 is clearly erroneous and should be deleted on the same basic rationale as applied to Condition 1. The project, as designed and conditioned, is consistent with the DDECM. *Testimony of R. Balmelli*. It also employs modeling per the adopted state and county requirements. *See id.* The condition provides that other, unidentified standards may apply and further analysis is necessary. However, it does not specify what those standards are or how they can be achieved. As a result, the Hearing Examiner concludes that the condition fails to identify the SEPA policies that support it, and it is not reasonable or capable of being accomplished.

4.4 The Hearing Examiner agrees that Condition 6 should be modified because it is not based upon adopted County standards and does not set forth terms that are reasonable or capable of being accomplished.

The Applicant contended that Condition 6 should be modified to delete the language amount incorporate site features and other matters, and instead simply state that the Designs and Operations Plans shall meet the requirements of the DDECM. *See Att. G3, p. 10*. The project engineer testified that the

⁴ At the hearing, the Applicant suggested the conditions be revised to require consistency with the DDECM and the applicable stormwater manual, in light of the project engineer’s testimony. However, the question with respect to the MDNS condition is whether they are clearly erroneous. Because there was no clear error, the conditions should not be changed, even though the suggested revisions are reasonable.

requirements of Condition 6 are addressed by satisfying the DDECM and other requirements, such as the conditions of the DOE Sand and Gravel Permit. *Testimony of R. Balmelli*. This Applicant did not demonstrate that the condition was clearly erroneous, but rather than it would prefer different language to accomplish the same thing.

Condition 6 will therefore remain the same, with the exception of deleting the references to tribal and public concerns. It is inappropriate to impose a condition requiring a property owner to address “tribal concerns” or “public concerns,” without enumerating those concerns and laying out some approach for doing so. As written, the condition could justify the imposition of numerous and evolving conditions, with no clear end to the process. It could also justify conditions that are impossible to satisfy. For example, how does one decide when and whether “public concerns” are satisfied? The proposed condition is clearly erroneous because it is not based upon any discrete standard and is not reasonable or capable of being accomplished.

4.5 The Hearing Examiner agrees that the second sentence of Condition 7 should be deleted because it does not provide a standard for compliance that an applicant can reasonably accomplish.

The second sentence of Condition 7 states that the “currently provided 5-year buildout drawing and an appropriate Operations Plan may be sufficient, with the changes made to meet the full requirements of this MDNS.” The Applicant contended that this provision fails to identify a SEPA Policy, fails to identify the specific impact justifying the requirement, and fails to set a “goalpost” the Applicant can achieve. *See Att. G3, pp. 10-11*. The Hearing Examiner agrees.

The MDNS condition suggests that the drawing and plans “may be sufficient” so long as changes are made to “meet the full requirements” of the MDNS. This condition does not identify the deficiencies with the drawing and plans, nor does it specify the changes necessary to meet the full requirements of the MDNS. The Hearing Examiner concludes the condition is clearly erroneous because it does not clearly articulate the standard that applies or the steps that must be taken to achieve compliance. The condition could mean a wide range of things, depending upon the subjective impressions of the reader. As a result, it is not a proper condition under SEPA.

Conflicting Expert Testimony on SEPA Appeals

Reaching a decision in this case was significantly more difficult given the conflicting expert testimony regarding the potential impacts to groundwater and surface water. Mr. Halbert, Mr. Balmelli, and Mr. Hansen were all well-experienced and qualified to opine on the respective issues, and each articulated their professional opinions in a manner that reflected their expertise. The purpose of this section is to briefly address a few of the central points of disagreement, not previously discussed, and explain how the Hearing Examiner resolved the conflicting testimony.

Stormwater Baseline. Mr. Hansen contended that the stormwater facility should have been designed using an undeveloped, forested condition. *Testimony of K. Hansen; see also Exs. Y1 & Z1*. Because the system was designed based on existing conditions (as currently mined), the resulting analysis is much more favorable to the development and less protective of the environment than it should be. *See id.* Mr. Hansen also contended that the wrong soil classification was used (A/B, rather than C), and this also effected the validity of the stormwater analysis. *See id.* Ultimately, the Hearing Examiner was not convinced by these contentions.

The proper baseline for designing the stormwater system is the existing conditions of the site. The current recharge rate of the ground and surface waters reflects the current conditions, not the conditions

that existed thirty years ago, before the original mining activity. Mr. Balmelli testified that the use of existing conditions was consistent with the DDECM. *See id.* He also testified that that Minimum Requirements 8 of the stormwater manuals requires the use of existing conditions in order to match the existing flows, specifically to protect wetlands. *Testimony of R. Balmelli.* Mr. Hansen testified that use of the forested baseline would be the “better,” in his judgment. *Testimony of K. Hansen.* However, he ultimately did not claim that the use of existing conditions was inconsistent with the DDECM or other regulatory requirements. *Testimony of K. Hansen.*

The Hearing Examiner concludes that the soil designation in the stormwater analysis did not undermine the validity of the analysis. Mr. Balmelli testified that the soil classification referenced by Mr. Hansen related the final reclamation plans, not the stormwater plans. *Testimony of R. Balmelli.* Mr. Hansen agreed with this point. *Testimony of K. Hansen.* The final reclamation plan is at the conceptual stage, and would not include a detailed analysis or final designs until much later in the process. *Testimony of R. Balmelli.* The stormwater facility at issue is the stormwater design for the first five years. *See id.* Whether the soil is classified as A/B or C would ultimately make no difference, as the stormwater model satisfied the standards under both scenarios. *See id.*

Impairment of Flow. Mr. Hansen cited to the *Foster* and *Hirst* decisions for the proposition that the project could not result in the loss or reduction of a “single molecule” of water, given that the receiving waters were already impaired. *Testimony of K. Hansen.* The Applicant responded that the *Foster* and *Hirst* decisions concern the withdrawal of groundwater and the impairment of water rights, an entirely different subject matter. The Hearing Examiner agrees with the Applicant.

The Hearing Examiner does not believe the principles of those cases, or the statutory scheme more recently adopted to protect instream flows, has any application here. Mr. Hansen did not cite to any authority or specifically explain how the instream flow rules or standards apply to this case. Moreover, the proposal does not include the withdrawal of groundwater which could impact pre-existing water rights or adopted standards for minimum instream flows. Because this line of authority does not apply, and the legal issue was not addressed in sufficient detail, the Hearing Examiner declines to apply a “single molecule standard” to this project.

Lack of Information. Mr. Hansen contended that the hydrogeologic information was inadequate in various ways. The Hearing Examiner has concluded otherwise elsewhere in this decision. That aside, some additional comment should be provided regarding the alleged lack of information regarding impacts on the climate. Mr. Hansen contended that the Applicant refused to submit a climate analysis or scenario, despite multiple requests to do so. *Testimony of K. Hansen.* The implication is that the environmental analysis was lacking to some extent. The Hearing Examiner disagrees, for a few reasons.

First, there was no citation to a specific requirement or standard for conducting a climate change analysis. The Hearing Examiner is not aware of that any such standard has been adopted or is applicable to this project.

Second, Mr. Balmelli testified that, according to his research, the requested climate analysis was not feasible or proper under the applicable models. *Testimony of R. Balmelli.* Mr. Hansen apparently believed otherwise, but the specifics were lacking. The Hearing Examiner concludes that the requested analysis cannot reasonably be accomplished, at least on this record.

Third, the County issued the MDNS without requiring a climate scenario. Mr. Hansen testified that, to compensate for the absence of a climate analysis, the County required the stormwater system to be modeled based upon a 100-year event, as this would be an acceptable proxy for the long-term effects of

climate change. *Testimony of K. Hansen*. Thus, the climate impacts of concern to the County were sufficiently addressed, by its own analysis.

CONCLUSIONS OF LAW

- 5.1 Any finding of fact above that is a conclusion of law is deemed a conclusion of law.
- 5.2 The proposed use complies with the Thurston County Comprehensive Plan.
- 5.3 The proposed use complies with Thurston County laws or plans.
 - 5.3.1 The proposal satisfies transportation concurrency requirements of Chapter 17.10 TCC.
 - 5.3.2 The proposal satisfies the requirement to obtain a Class IV-General Forest Practices permit, consistent with Chapter 17.25.
 - 5.3.3 The proposal is not subject to tree conservation standards set forth in Chapter 17.27.
 - 5.3.4 The shoreline master program is not relevant to this project because no mining activities occur within 200 feet of a shoreline.
 - 5.3.5 The Applicant is not required to obtain a mineral lands designation for the entire site in order to allow the proposed mining operation.
- 5.4 The proposed use complies with Chapter 17.20 of the Thurston County Code.
 - 5.4.1 The proposed mining operation satisfies the requirements for spill prevention.
 - 5.4.2 The proposed mining operation satisfies the requirements for the use of fuel and hazardous materials.
 - 5.4.3 The proposed mining operation provides for the control of drainage and stormwater consistent with Chapter 17.20.
 - 5.4.4 The proposed mining operation, as conditioned, complies with the standards for wash and other process water.
 - 5.4.5 The proposed mining operation is required to mitigate impacts on domestic water supplies.
 - 5.4.6 The proposed mining operation satisfies the requirements for roads serving a mining operation.
 - 5.4.7 The proposed mining operation makes appropriate provisions for dust and smoke control.
 - 5.4.8 The proposed mining operation, as designed and conditioned, satisfies the standards with respect to noise levels and noise mitigation.
 - 5.4.9 The proposed mining operation satisfies the rehabilitation and conservation requirements of Chapter 17.20.

- 5.4.10 The Applicant submitted a hydrogeologic report that includes the elements and information required by Chapter 17.20 TCC, including all the applicable requirements of TCC 17.20.200(A)-(M).
- 5.4.11 The hydrogeologic report includes a water quality monitoring system in accordance with TCC 17.20.210.
- 5.4.12 The proposed mining operation maintains a sufficient horizontal distance between the excavation activities and the nearest drinking water wells.
- 5.4.13 The proposed mining operation satisfies the standards for landscaping and screening.
- 5.4.14 The proposed mine satisfies the operational standards set forth in Chapter 17.20.
- 5.5 The proposed use complies with all applicable federal, state, and regional laws and plans.
- 5.6 The proposed use complies with the general purposes and intent of the applicable zoning district and subarea plans.
- 5.7 The proposed use, as conditioned, satisfies the open space, setback and bulk requirements of the applicable the zoning district.
- 5.8 The proposed special use is appropriate in the location for which it is proposed, based upon the criteria set forth in TCC 20.54.040.
 - 5.8.1 The proposed special use does 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 public health, safety and welfare.
 - 5.8.2 The proposed special 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.
- 5.9 The accessory uses associated with the proposed mining operation are expressly permitted in accordance with the special use permit approved by this decision.
- 5.10 The project avoids and mitigates the potential impacts on critical areas and habitats consistent with Title 24 of the Thurston County Code.
- 5.11 The proposed mining operation is consistent with Chapter 24.10, regulating critical aquifer recharge areas (CARA).
- 5.12 There are no legal grounds to condition or deny the project based upon the alleged lack of a county permit for the existing mining operation.
- 5.13 There are no legal grounds to condition or deny the project based upon past code enforcement actions.
- 5.14 The County properly considered the environmental factors and impacts and therefore complied with SEPA when it issued the MDNS.

- 5.14.1 The potential groundwater and aquifer impacts of the proposed mining operation were properly analyzed and considered by the County.
- 5.14.2 The County did not overlook or disregard the potential impacts to water quality.
- 5.14.3 Blasting will not result in significant impacts that require additional mitigation.
- 5.14.4 The County did not fail to consider air quality impacts during its environmental review.
- 5.14.5 The County did not fail to consider the environmental impacts to species and habitat.
- 5.14.6 The County did not fail to consider impacts from truck traffic to and from the proposed mining operation.
- 5.14.7 The MDNS did not overlook the concerns of area tribes regarding potential impacts to cultural resources.
- 5.14.8 The MDNS was not clearly erroneous for failure to include a substantive analysis of alleged socioeconomic impacts.
- 5.14.9 The MDNS was not clearly erroneous due to the alleged failure to include conditions designed to protect children.
- 5.14.10 The MDNS was not clearly erroneous due to the alleged omission of climate change concerns.
- 5.14.11 The MDNS was not clearly erroneous for failure to adequately address land use impacts or planning compliance.
- 5.14.12 The MDNS is not clearly erroneous because of allegedly insufficient or incomplete answers in the SEPA checklist.
- 5.14.13 The threshold decision was not clearly erroneous because it violated the SEPA policy against piecemeal decision-making.
- 5.15 The County clearly erred when it imposed conditions that were not based upon SEPA standards or were not reasonable or capable of being accomplished.
 - 5.15.1 Condition 1 should be deleted because it is not based upon adopted County standards and does not set forth terms that are reasonable or capable of being accomplished.
 - 5.15.2 Condition 5 should be deleted because it is not based upon adopted County standards and does not set forth terms that are reasonable or capable of being accomplished.
 - 5.15.3 Condition 6 should be modified to delete references to “public concerns” and “tribal concerns” because those terms do not provide a standard for compliance that an applicant can reasonably accomplish.
 - 5.15.4 Condition 7 should be deleted because it does not provide a standard for compliance that an applicant can reasonably accomplish.

- 5.16 The Hearing Examiner has jurisdiction to hear and decide this application. The approval of the special use permit is authorized by TCC 20.54.015(2) and is appropriate under TCC 20.54.050 and TCC 2.06.010(B) of the Thurston County Code, the Hearing Examiner ordinance.
- 5.17 Any conclusion of law above that is a finding of fact is deemed a finding of fact.

ORDERS ON MOTIONS

6.1 Order Denying Appellant's Motion for Summary Judgment.

Alexander submitted a motion for summary judgment requesting a ruling that the MDNS was invalid as a matter of law. *See Ex. 5.* Alexander contended that the MDNS was erroneous as a matter of law because (1) it was not based on information reasonably sufficient to evaluate the impact of the loss of 200 acres of forest-lands of long-term commercial significance; (2) it did not consider the permanent loss of forestland due to the failure to obtain a Class IV forestland conversion permit; (3) it did not consider effects of the project on climate change; (4) it was issued without consideration of significant environmental impacts or their mitigation; and (5) the County failed to coordinate with the Squaxin Island Tribe prior to issuance.

The Hearing Examiner concludes that the issues raised by Alexander inherently involve resolution of disputed facts, or mixed questions of law and fact, that are not properly decided on summary judgment. Alexander contends, for example, that the proposal will permanently destroy 200 acres of forest land, justifying a summary ruling that the impacts were not properly addressed. However, the factual contentions underlying this argument are disputed, at the minimum. The SUP would expand an active rock mine from 10 acres to 42 acres. Once the mining operation is concluded, a reclamation plan will be implemented to return the site to active commercial forestry. Looking at the facts most favorably to the respondent, the proposal temporarily deforests 42 acres, not 200, and does not “destroy” any forest given the plan for reclamation.

Alexander further contended that, as a matter of law, the impacts of the project were not adequately considered or mitigated, including impacts to climate. The record, however, addressing the potential impacts of the project is extensive, including numerous communications and comments showing that the information was considered in detail by the lead agency. The record is replete with disputed facts on the question of impacts and mitigation. In addition, with respect to climate change, Alexander did not cite to SEPA rules or regulations that govern a review of the effects of or impacts to climate change. Judgment as a matter of law is inappropriate for that reason as well. Finally, whether the County failed to adequately coordinate with the Squaxin Island Tribe is also not proper for summary judgment. It is true that the Tribe objected to the timing of the County's request for comments. But the record is silent on any further concerns of the Tribe. It did not participate further in the process, on this record, and has not claimed that the MDNS was improper because of the lack of consultation.

The scope of the operation, the adequacy of the mitigation measures, and the sufficiency of the information in the record are all disputed matters which require consideration of the whole record, following a hearing on the merits.

The Hearing Examiner concludes that there are genuine issues of material fact that must be resolved in order to make a decision in this case. It is not appropriate, on this record, to render judgment as a matter of law. As a result, the motion for summary judgment is denied.

6.2 Order Granting Applicant's Motion to Dismiss Alvarado.

The Applicant submitted a motion to dismiss the SEPA appeal filed by Alvarado for lack of standing. *See Ex. 8.* The Applicant also sought to dismiss Derek and Traci Johnson as parties to the SEPA appeal filed by Alexander, for the same reason. *See id.* Applicant contended that these parties lacked standing to lodge a SEPA appeal because they did not submit written comments during the SEPA comment period, as required by TCC 17.09.160(B). *See id.*

In response to the motion to dismiss, Mr. Johnson provided a copy of a written comment submitted to the County on May 27, 2025, the last day of the SEPA comment period. *See Ex. 9; see also Att. L.* Mr. Johnson explained that the comment was time-stamped at 6:35 p.m., but it was still timely because the time referenced CDT (Central Daylight Time). *See Ex. 9.* Based upon this information, the Applicant conceded that the Johnsons submitted a timely, written comment during the SEPA comment period. *Testimony of N. Rogers.* As a result, the Applicant conceded that the Johnsons had standing and should not be dismissed as parties to the Alexander SEPA appeal. *See id.*

Alvarado opposed the motion to dismiss through a preemptive filing, raising various “affirmative defenses” to the Applicant’s motion. *See Ex. 11.* These defenses provided various reasons that the appeal should not be dismissed despite the lack of submitting written comments. *See id.* At the hearing, Mr. Alvarado conceded that no written comments were submitted during the SEPA comment period. *Testimony of R. Alvarado.* However, he contended that he should be permitted to pursue the SEPA appeal regardless of that oversight. *See id.*

The MDNS set forth a comment period which expired on May 27, 2025. *See Att. L.* The Thurston County Code states that only persons who submit written comments during the comment period may appeal the threshold determination. *See TCC 17.09.160(B).* The MDNS incorporates this requirement explicitly. *See Att. L, p. 2.*

Alvarado did not submit written comments during the comment period for the MDNS. As a result, Alvarado does not have standing to appeal the MDNS. The Hearing Examiner lacks jurisdiction to consider the appeal. In addition, Alvarado’s arguments in opposition to the motion are, in essence, an appeal to equity. The Hearing Examiner cannot ignore or disregard code requirements based upon equitable considerations. *See Chaussee v. Snohomish County Council*, 38 Wn.App. 630, 638, 689 P.2d 1084 (1984). The Hearing Examiner can only interpret the applicable ordinances and regulations as written. *See id.* The Hearing Examiner does not have jurisdiction to grant equitable remedies. *See id.*

The Hearing Examiner concludes that Alvarado lacks standing to pursue an appeal under SEPA. Therefore, Alvarado’s appeal of the MDNS is dismissed.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed special use permit subject to the following conditions:

State Environmental Policy Act Mitigating Conditions

1. Stormwater flow from the mine shall be controlled to meet requirements of the current DDECM and provisions set forth in TCC 17.20 – Mineral Extraction and Asphalt Production requirements at the mine permit boundary, up to and including a mandatory 100-year (1%) storm size.

2. Water effluent from the mine shall be treated to meet the DDECM, and TCC 17.20 requirements at the mine permit boundary, up to and including water quality treatment for a 100-year (1%) storm size.
3. Methods, Best Management Practices (BMP's), and outcomes for controlling stormwater quantity and quality shall meet the requirements of the most recent DDECM.
4. Designs and an Operations Plan shall be developed that incorporate important site features such as the mountainous site location, exposed hardrock conditions, shallow soil cover, reclamation practices, Department of Natural Resources (DNR) permit requirements, nearby/adjacent wetlands and waterways, sensitive salmonid bearing downstream ecosystems, and the long term nature of the mining practiced at the site.
5. Drainage designs shall provide five-year snapshots of mine stormwater controls as they will be constructed, recognizing that mining activity may take place over decades. Subsequent 5 year reviews of the Special Use Permit (SUP) shall be accompanied by subsequent drawings presenting the expected mining activities.
6. No wetlands or streams are proposed to be impacted. However, in the event any offsite wetlands are somehow impacted in the future, any lost wetlands shall be mitigated for at a 2:1 ratio and be mitigated in the sub-watershed of Johnson Creek, at locations and using methodologies/plans approved by the County per TCC 24.30.090 and 24.30.220. Impacts to wetlands larger than 4,000 square feet shall be mitigated through the Reasonable Use Exception process.
7. Stormwater dispersion adjacent to or within the outer 25% of wetland buffers shall meet all criteria per TCC 24.30.310 and 24.30.312.
8. The basis for critical area impact avoidance is that discharge waters from the proposed mine will flow into upland forest, which can slow the rate of flow for groundwater recharge and filter sediments. This would then require the forested areas adjacent to critical areas and buffers to remain unharvested to provide this ecological benefit. Therefore, during the term of the Special Use Permit for mining, no forest practices may occur within the critical area buffers located within the mining permit boundary, as mapped on the project site plans.
9. In the event that future adaptive management calls for any revisions to designs and operational practices, the revised designs and operation practices shall meet TCC 24.25.240 (no adverse changes to groundwater flows and temperature that would be harmful to aquatic life).

Planning Conditions

10. The on-site use and storage of fuel, cleaners, or other hazardous materials must comply with the standards set forth in TCC 17.20.050.

11. All process water of the mining operation, if any is generated, shall be used, stored and disposed of in a manner that does not negatively affect ground or surface water. Process water must be handled in such a way that complies with TCC 17.20.070.
12. If any mining operation or asphalt plant causes the water quality of any domestic water supply to fail to meet the drinking water quality standards of WAC 246-290, as amended, the mine or asphalt plant owner shall remedy the effect of the operation on the water supply through monetary payment to the water system owner, the provision of treatment methods and devices that are approved by the state department of health, or other correction of the specific water quality problem. This mitigation shall be approved by the designated authority and the state department of health. Note: See Thurston County Sanitary Code Article III for regulations governing drinking water well.
13. The operator shall obtain all required preconstruction approval permits from the Olympic Regional Clean Air Agency and shall comply with all the requirements of the Olympic Regional Clean Air Agency. In addition, the approval authority may require methods of dust control, such as water trucks or sprinklers, that will mitigate the mitigation of dust from the site.
14. Noise levels shall comply with WAC 173-60. The operator shall ensure that noise levels are monitored by a technician with the qualifications contained in WAC 173-58, or acceptable qualifications as determined by the designated authority, using instruments that meet the qualifications of WAC 173-58, at the property boundaries, at least quarterly after the initiation of the mining or other permitted activity. Noise levels and monitoring must comply with TCC 17.20.110. The frequency of monitoring may be adjusted as allowed by TCC 17.20.110.
15. Special use permits containing specific conditions regarding operating hours shall be governed by those conditions. For mining and accessory uses within or adjacent to a residential zoning district, the hours of operation for excavating, processing and loading are limited to seven a.m. to seven p.m. Monday through Saturday. See TCC 17.20.115 for activities exempt from operating hours restrictions.
16. Warning signs may be required by the approval authority; such signs shall meet all requirements of Chapter 20.40 TCC.
17. All lighting shall be limited to the lowest intensity which allows the permitted activity to be carried out in a safe manner. The lights shall be shielded and directed so that illumination affects only the premises of the site and does not result in glare outside of the permit site or on public rights-of-way.
18. Owners of all mining operations shall submit completed registration forms, as specified in TCC 17.20.150 to the County on an annual basis. A mineral extraction use shall be considered vacated if the mining operator has not timely submitted a complete registration form and related fee to Thurston County per Section 17.20.140 for three consecutive years, or if more than fifty percent

of the permitted mining site has been converted to another use at any time, or if significant mining activity (as defined in TCC 17.20.150) has ceased for a period of three consecutive years.

19. The operator must provide access to the site for inspections per TCC 17.20.160. An inspection or conference is required before operation begins, and mines and asphalt plants, whether in existence on the date of adoption or subsequently permitted, shall be inspected annually for compliance with TCC 17.20.
20. All vehicles leaving the site shall comply with RCW 46.61.655 (escape of load materials and cleaning of vehicles).
21. The operator shall employ reasonable site access control measures, such as locked gates, to prevent illegal dumping of solid waste.
22. The operator shall visibly post his or her name, address and phone number, or the name, address and phone number of a designated person whom the public can contact, to report complaints or violations. Such signs shall comply with Chapter 20.40 TCC.
23. Groundwater monitoring must occur according to the approved hydrogeological report, and the standards set forth in TCC 17.20.210.
24. Stockpiles shall not exceed one hundred feet in height as measured from ground level before excavation and shall be set back twice the height of the stockpile from the edge of the nearest property boundary as measured from the center of the stockpile. The approval authority shall consider all reasonable measures, including additional stockpile setbacks to prevent any materials or wastes deposited upon any stockpile from being washed, blown or otherwise transferred off the site by normal causes or forces. The operator shall provide a survey by a registered land surveyor certifying the height of any stockpiles on the site at any time requested by the director, to ensure compliance with this section.
25. No ground vibration caused by blasting or machinery shall exceed the limits established by state regulations. Further regulations may be required to mitigate impact on adjoining properties.
26. Any use for which a special use is authorized by the approval authority and which complies with the specific requirements of this chapter and those of other applicable chapters of this title shall be deemed to be a permitted use on the lot on which it is thus permitted. Once a special use has been authorized, however, the use shall not be enlarged, extended, increased in intensity, or relocated unless an application is made for a new or amended special use authorization.
27. This condition applies only to structures that require engineering approval. Any mine-related structures such as dams, impoundments, spoils piles, and fill material piles, which require engineering approvals shall be submitted for required permits to ensure compliance with the below standards.

Studies and designs for stormwater control structures such as dams, impoundments, spoils piles, fill material piles, and other mine-related structures shall be submitted and approved that:

- i. Are designed to withstand seismic events and not produce slope failures, nor erosion,
 - ii. Site Class B/C used for this application
 - iii. PGA .55g @ 0.2 sec _____ S1 _____ .41g _____ vertically
 - iv. Horizontal acceleration Shear wave velocity 2,100 to 3,00 ft/sec per table 20.6.2-1 WAC 50-50-1613; Site Class B/C
 - v. Meet all applicable FEMA, Washington State, and Thurston County seismic stability criteria. Using IBC 2021 and US Army Corps of Engineers Guidelines for earthen embankments, USGS Unified Hazard Tool.
28. No mining, clearing or grading shall take place within a riparian management zone. The mining operation shall not encroach into any riparian management zone required by or established pursuant to Chapter 24.25 TCC.
29. The mining operators shall implement and comply with the monitoring plans included within Ex. 14.4c, 14.4e, and Ex. 1 Att. A1 together with the Adaptive Management and Contingency Plan at Ex. 14.4e.
30. The Applicant is required to provide critical area erosion control, construction fencing, and critical area signage as required by TCC 24.25.090.
31. Per TCC 24.25.140, clearing on lots in freshwater riparian management zones shall not exceed thirty-five percent of the portion of the lot or tract within freshwater or marine riparian management zone.
32. As part of the WA Dept. of Natural Resources permit a reclamation plan is required.
33. The Applicant shall maintain a natural forested buffer, a minimum ten feet wide, along the haul road on the northerly perimeter of the mining site and in those locations where vehicles traveling on the haul road would be visible to residential lands to the north. The natural forest buffer in this location will be maintained to fulfill the intent of TCC 17.20.240, rather than requiring a berm.
34. Prior to mining activities, the Applicant shall submit an application for a Class 4 forest land conversion permit.

Environmental Health Conditions

35. All accumulated piles of concrete and asphaltic wastes, not permitted by law to remain, shall be removed from the site and properly disposed. Please contact Environmental Health's Hazardous Waste program at 360-867-2664 once complete.
36. The facility must renew its Gravel Mine Registration for 2025 with Environmental Health's Hazardous Waste program.

Public Works Development Review Conditions

ROADS

37. The access to the County road shall be improved to meet current Thurston County Standards prior to mine expansion.
38. The proposed roadway in concept and design shall conform to the Road Standards.

TRAFFIC CONTROL DEVICES

39. All traffic control devices shall be designed, located, manufactured, and installed in accordance with the Road Standards, Manual of Uniform Traffic Control Devices and applicable WSDOT Standards & Specifications. A sign and striping plan shall be incorporated into the construction drawings for the project. Please contact Thurston County Public Works – Development Review Section Staff to obtain the most current Thurston County guidelines.

DRAINAGE

40. The storm water management system shall conform to the Drainage Design & Erosion Control Manual.
41. All drainage facilities outside of the County right-of-way shall remain private and be maintained by the developer or owner.
42. Storm water runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact any existing drainage or other properties.

GENERAL CONDITIONS

43. This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant.

PROJECT SPECIFIC CONDITIONS

44. Once the Hearing Examiner has issued the official approval, submit a full size set of construction drawings, the final drainage and erosion control report and all applicable checklists along with an electronic copy to Thurston County Public Works – Development Review Section for review and acceptance.
45. PRIOR to construction, the Applicant shall:
 - a. Pay outstanding construction review and inspection fees*
 - b. Receive erosion and sediment control permit
 - c. Have the erosion and sediment control inspected and accepted
 - d. Receive a construction permit

- e. Schedule a pre-construction conference with county staff.

* The current fee schedule can be found online at <http://www.co.thurston.wa.us/permitting/fees/fees-home.html> or contact Ruthie Padilla with the Thurston County Public Works – Development Review Section by phone at 360-867-2050, or by e-mail at ruthie.moyer@co.thurston.wa.us.

ADDITIONAL CONDITIONS

- 46. Mining shall stay above the level of groundwater as mapped in Figures 7 and 8 of Ex. 14.4c, until additional water quality data testing for iron (Fe), manganese (Mn), turbidity, nitrate (NO₃ expressed as N), total petroleum hydrocarbons, and water chemistry parameters related to the ability of silts and clays to settle from water are obtained and submitted to the County, consistent with TCC 17.20.200(H).
- 47. The Applicant must comply with all requirements of state and/or federal law to avoid disturbance and alteration of artifacts, remains, or other cultural resources on site during development. In the event of inadvertent disturbance or alteration, the Applicant must immediately stop work and contact the relevant tribes and the State Department of Archaeology and Historic Preservation. The Applicant shall prepare and implement an Inadvertent Discovery Plan (IDP) to protect potential resources of archaeological, cultural, or historical significance at the site.

DATED this 26th day of September, 2025.



Brian T. McGinn
Thurston County Hearing Examiner Pro Tem

ATTACHMENT A TO DECISION

HEARING EXHIBITS LIST

	Documents	Date of Document
1.	Exhibit 1 - Staff Report	6/24/2025
2.	Attachment A – Master Application	Received 8/14/2020
3.	Attachment B – Special Use Application	Received 8/14/2020
4.	Attachment C – SEPA Environmental Checklist	Received 8/14/2020
5.	Attachment D – Draft Workplan	Received 11/1/2022
6.	Attachment E – Special Use Permit Submittal Letter and Narrative	8/11/2020
7.	Attachment F – Site Plans	2/14/2025
8.	Attachment G – Johnson Creek Quarry Extension – Post Developed Basin Map	Undated
9.	Attachment H – Mine Cross Sections	Received 12/11/2023
10.	Attachment I – Color Coded Site Plan Titled “Phased Mining Plan”	Est. 9/23/2022
11.	Attachment J – Site Plans Sheets 1 – 7	9/23/2022
12.	Attachment K – Notice of Application with Property Owners List of those within 2,600’	2/10/2021
13.	Attachment L – SEPA Determination (MDNS)	Issued 5/13/2025
14.	Attachment M – SEPA Determination (MDNS) and Checklist for filling and grading of approx. 2,750,000 cubic yards of clean soil material within a 32 acre project area	Issued 4/5/2019 Received 2/7/2019
15.	Attachment N – Letter from Thurston County (Michael E. Kain) to Mr. Verner Schmidt regarding legal status of the existing mine at that time with attached WA State Dept. of Natural Resources permit	12/11/1991
16.	Attachment O - Letter from WA State Dept. of Natural Resources to Vern N. Schmidt regarding Surface Mining Permit 70-012716 and approval of a bond for reclamation requirements with a list of conditions at Exhibit A.	11/3/1992
17.	Attachment P - WA State Dept. of Natural Resources SEPA Environmental Checklist for Johnson Creek Rock Pit. Applicant was Weyerhaeuser Co. and applicant was Verner N. Schmidt for Continued operation of an existing forest road rock pit to include commercial sales of basalt rock products with a site operation size of 10.4 acres.	4/22/1992
18.	Attachment Q - Interim Groundwater Monitoring Report from Insight Geologic, Inc.	10/23/2022
19.	Attachment R - Proposed Surface Water Sample Locations, colored aerial photo set of 3 maps	Undated
20.	Attachment S - Summary of Chemical Analytical Data – Groundwater/Surface Water (Table 6)	Received 9/25/2024
21.	Attachment T - Haul Road Material & Access Safety Plan	Received 9/25/2024

22.	Attachment U - Level 1 Trip Generation, Distribution and Access Inspection Letter by Jake Traffic Engineering, Inc.	2/12/2020
23.	Attachment V - Letter from Ecological Land Services to RB Engineering regarding Supplemental Critical Area Report	9/11/2024
24.	Attachment W - Critical Areas Report from Ecological Land Services	5/27/2020; Revised 11/23/2022
25.	Attachment X - Johnson Creek Quarry Expansion, Site Management Plan by RB Engineering	April 2023; Received 12/11/2023
26.	Attachment Y - Site Management Plan and TIR by RB Engineering	August 2020
27.	Attachment Z - Contingency & Adaptive Management Plan by RB Engineering	October 2023; Updated Feb. 2025
28.	Attachment A1 – Drainage Report by RB Engineering	Feb. 2025
29.	Attachment B1 - Approval Memo from Thurston County Public Works, Development Review Section, Arthur Saint, PE	4/25/2025
30.	Attachment C1 - Approval Memo from Thurston County Public Health and Social Services, Environmental Health Section by Dawn Peebles	4/25/2025
31.	Attachment D1 - Thurston County Planning Staff, Scott McCormick, Assoc. Planner Review of Johnson Creek Mine Adaptive Management Plan and maps	2/25/2025
32.	Attachment E1 - Draft SEPA MDNS Mitigation Requirements for Johnson Creek Mine. Initial SEPA MDNS recommendations from review staff including Kevin Hansen, LHg, LG, LEED AP / Thurston County Hydrogeologist, Heather Tschaekofske, Assoc. Planner / Biologist and Scott McCormick, Assoc. Planner	12/6/2024
33.	Attachment F1 - Draft SEPA MDNS Mitigation Requirements for Johnson Creek Mine from Kevin Hansen, Thurston County Hydrogeologist	3/3/2025
34.	Attachment G1 - Memo from Kevin Hansen, Thurston County Hydrogeologist to Thurston County Planning staff Scott McCormick and Heather Tschaekofske regarding review comments and recommendation of a DS (Determination of Significance)	10/23/2024
35.	Attachment H1 - Email from Heather Tschaekofske, Assoc. Planner, Biologist to Scott McCormick and Kevin Hansen regarding her review of revised critical area submittals	10/22/2024
36.	Attachment H1.1 - Email from Kevin Hansen to Planning staff Brett Bures, Scott McCormick, Heather Tschaekofske, and Ashley Arai	11/21/2024
37.	Attachment H1.2 - Email from Mark Bieber, Thurston County Engineering Geologist to Kevin Hansen, Ashley Arai, Scott McCormick, Brett Bures, and Abbie Adams	12/3/2024
38.	Attachment H1.3 - Email from Brett Bures to Scott McCormick	4/16/2025
39.	Attachment I1 - Email from Chris Aldrich, RB Engineers, point of contact to Kevin Hansen, Thurston County Hydrogeologist and Bill Halbert (geological consultant) regarding WWHM Pre-Post basin flows	10/22/2024
40.	Attachment J1 - Letter from RB Engineering to Scott McCormick, Assoc. Planner and Brett Bures, Development Services Manager regarding a SEPA Determination of Significance or Mitigated	9/24/2024

	Determination of Non-significance (MDNS) arguing that a MDNS should be issued vs. a Determination of Significance	
41.	Attachment K1 - Email from jaketraffic@comcast.net to Chris Aldrich, Landscape Architect and applicant point of contact regarding estimated truck traffic	8/14/2024
42.	Attachment L1 - Draft Determination of Significance and Notice of Scoping for an Environmental Impact Statement	June 2024
43.	Attachment M1 - Letter from CH & Cairncross & Hempelmann, Attorneys at Law to Scott McCormick, Thurston County Assoc. Planner, and Joshua Cummings, Director, regarding whether a SEPA Determination of Significance (DS) or Mitigated Determination of Non-significance (MDNS) should be issued for the project and arguing that a MDNS was appropriate	5/30/2024
44.	Attachment N1 - Email from Lacy Garner (former Thurston County Associate Planner) to internal planning staff regarding the SEPA process re: EIS distribution DOCUMENT STRICKEN	
45.	Attachment O1 - Email from Arthur Saint, PE to Scott McCormick, Assoc. Planner regarding SEPA DS vs. MDNS and traffic impact analysis	4/18/2024
46.	Attachment P1 - Email from Heather Tschaekofske, Assoc. Planner / Biologist to Scott McCormick, Assoc. Planner regarding an email from Chris Aldrich, applicant point of contact dated 02/29/24 regarding a SEPA DS vs. a SEPA MDNS and arguing for a SEPA MDNS	2/29/2024
47.	Attachment Q1 - Letter from RB Engineering, Chris Aldrich, Landscape Architect and applicant point of contact to Scott McCormick, Assoc. Planner including a narrative for the subject Special Use Permit	11/2/2023
48.	Attachment R1 - Letter from RB Engineering, Chris Aldrich, Landscape Architect and applicant point of contact to Scott Longanecker, Assoc. Planner regarding responses to Kevin Hansen, Thurston County Hydrogeologist comments	11/1/2023
49.	Attachment S1 - Letter from RB Engineering, Robert Balmelli, PE to Kevin Hansen, Thurston County Hydrogeologist, reply to Hydrogeologic Review Memo	10/16/2023
50.	Attachment T1 - Email from Heather Tschaekofske, Assoc. Planner / Biologist to Scott McCormick, Assoc. Planner regarding review of the project Critical Areas Report	7/12/2023
51.	Attachment U1 - Email from Patrick Soderberg, Thurston County Solid & Hazardous Waste Program regarding annual registering of active mines and performing an inspection of hazardous material storage and uses	2/7/2023
52.	Attachment V1 - Communication Matrix regarding the Johnson Creek Quarry SUP to the applicant point of contact regarding Critical Area and Hydrogeologic review issues	2/6/2023
53.	Attachment W1 - Email from Kevin Hansen, Thurston County Hydrogeologist to Heather Tschaekofske, Assoc. Planner / Biologist regarding Hydrogeologic and Critical Area reviews	12/2/2022

54.	Attachment X1 - Communication Matrix response from the applicant consultant to Lacy Garner, Assoc. Planner regarding the Johnson Creek Quarry SUP. Original Matrix	10/26/2022
55.	Attachment Y1 - Hydrogeologic Review Memorandum from Kevin Hansen, Thurston County Hydrogeologist to Scott McCormick, Senior Planner <i>sic</i> regarding Draft Updated Review of the 4th version of the Hydrogeologic Report for the Johnson Creek Quarry SUP application	7/13/2023
56.	Attachment Z1 - Hydrogeologic Review Memorandum from Kevin Hansen, Thurston County Hydrogeologist to Scott McCormick, Senior Planner <i>sic</i> regarding Draft Updated Review of the 4th version of the Hydrogeologic Report for the Johnson Creek Quarry SUP application	7/10/2023
57.	Attachment A2 – Kevin Hansen, Thurston County Hydrogeologist to Scott McCormick, Senior Planner <i>sic</i> regarding Draft Updated Review of the 4th version of the Hydrogeologic Report for the Johnson Creek Quarry SUP application	2/14/2023
58.	Attachment B2 - Letter from RB Engineering, Chris Aldrich, Landscape Architect to Lacy Garner, Assoc. Planner regarding additional and revised information for County review	10/24/2022
59.	Attachment C2 - Hydrogeologic Review Memorandum from Kevin Hansen, Thurston County Hydrogeologist to Lacy Garner, Assoc. Planner, et. al. regarding preliminary review of the Johnson Creek Quarry Special Use Permit application	10/4/2021
60.	Attachment D2 - Letter from RB Engineering, Chris Aldrich, Landscape Architect to Lacy Garner, Assoc. Planner regarding a response to a hold letter dated 05/25/21 regarding multiple issues including the Environmental Health review, Hydrogeologic review and neighbor comments	7/12/2021
61.	Attachment E2 - Letter from Lacy Garner, Thurston County Assoc. Planner to Robert Balmelli, PE (primary consultant to applicant) regarding requested information from Thurston County Environmental Health and the County Hydrogeologist	5/25/2021
62.	Attachment F2 - Letter from RB Engineering, Robert Balmelli, PE to Lacy Garner, Assoc. Planner in response to review comments	4/30/2021
63.	Attachment G2 - Letter from the WA Dept. of Ecology to Mountain Stone Aggregate LLC and Johnson Creek Quarry regarding coverage under the Sand and Gravel General Permit: WAG501586 and the applicant's Notice of Intent application for coverage under Ecology's Sand and Gravel General Permit (S&GGP)	4/1/2021
64.	Attachment H2 - Letter from the WA Dept. of Ecology to Lacy Garner, Assoc. Planner regarding the proposed mine expansion which by their definition is a "major modification"	3/2/2021
65.	Attachment I2 - Mineral Extraction Sites Checklist for Preparing a Baseline Hydrogeologic Assessment Report and Adaptive Management Plan	Updated March 2021
66.	Attachment J2 - Public comment letter from Julie Plotkin & Scott Fielding	2/26/2021
67.	Attachment K2 - Public comment email from Tom McLean	2/21/2021

68.	Attachment L2 - Public comment letter from Tom McLean	Received 2/19/2021
69.	Attachment M2 - Project Review Timeline and Communication Matrix	Undated
70.	Attachment N2 - Letter from Lacy Garner, Assoc. Planner to Robert Balmelli, PE regarding completeness status (complete by default) and requesting additional information and pausing the review clock	2/8/2021
71.	Attachment O2 - Letter from the Nisqually Tribe to Ron Buckholt, Senior Planner requesting a cultural resources survey for the project	9/3/2020
72.	Attachment P2 - Letter from RB Engineering, Robert Balmelli, PE to Scott McCormick, Assoc. Planner regarding a Special Use Permit Submittal Letter and Narrative	8/11/2020
73.	Attachment Q2 - Letter from Thurston County Public Works, Arthur Saint, PE to Bob Balmelli regarding exemption from a Public Works Construction Permit	5/10/2019
74.	Attachment R2 - Thurston County Presubmission Conference Notes from Planning regarding a mine expansion for Mountain Stone Aggregates.	Conference Date 5/3/2018
75.	Attachment S2 - Public comment email from Diane J. King	5/22/2025
76.	Attachment T2 - Public comment email from Gordon White	5/23/2025
77.	Attachment U2 - Scott McCormick Response to public comment email from Diane J. King	5/23/2025
78.	Attachment V2 - Public comment email from Lisa Riner	5/21/2025
79.	Attachment W2 - Public Comment letter from CH & Cairncross & Hempelmann	5/27/2025
80.	Attachment X2 - Comment Letter from Department of Archaeological and Historic Preservation	5/27/2025
81.	Attachment Y2 - Public Comment email from Isha Alexander	5/19/2025
82.	Attachment Z2 -Public Comment email from Nicole Damer	5/21/2025
83.	Attachment A3 - Public Comment email from Jim Lazar	5/21/2025
84.	Attachment B3 - Public Comment email from Gordon White	5/22/2025
85.	Attachment C3 - Public Comment letter from the Department of Ecology	5/23/2025
86.	Attachment D3 - Public Comment email from Oscar and Georgene Talamantes	5/29/2025
87.	Attachment E3 - Public Comment email from Matt Zeigenfuse and Angela Deardorff-Zeigenfuse	5/26/2025
88.	Attachment F3 - Notice of Public Hearing	6/12/2025
89.	Attachment G3 - Appeal of an Administrative Decision relating to the SEPA MDNS	6/2/2025
90.	Exhibit 2 – Comments Received After Publication of Staff Report [No Document]	
91.	Exhibit 2a – Email from Jeremy P. Turner	5/27/2025
92.	Exhibit 2b – Email from Ronda Larson Kramer	6/1/2025
93.	Exhibit 2c – Email from Deborah Moore	5/27/2025

94.	Exhibit 2d – Email from Rosalyne & Gary Gulbranson	5/26/2025
95.	Exhibit 2e – Email from Shaun Dinubilo, Squaxin Island Tribe	5/27/2025
96.	Exhibit 2f – Letter from Kyle Gulbranson	5/27/2025
97.	Exhibit 2g – Email from Teah Gulbranson	5/27/2025
98.	Exhibit 2h – Email from William & Gloria Turner	5/27/2025
99.	Exhibit 2i – Letter from Isha Alexander and Patrick Kline	5/27/2025
100.	Exhibit 2j – Email from Sonja Anderson	5/27/2025
101.	Exhibit 2k – Email from Ana Carolina Rumsey	6/6/2025; 5/27/2025
102.	Exhibit 2l – Email from Erica Marbet, Squaxin Island Tribe	5/19/2025
103.	Exhibit 2m – Email from Esther Kronenberg	6/17/2025
104.	Exhibit 2n – Email from Oscar Talamantes	7/13/2025
105.	Exhibit 2o – Email from Kyle Gulbranson	7/13/2025
106.	Exhibit 2p – Email from Derek Johnson	7/14/2025
107.	Exhibit 2q – Email from Tracy & Greg Marquis	7/14/2025
108.	Exhibit 2r – Email from Rosalyne & Gary Gulbranson	7/14/2025
109.	Exhibit 2s – Email from Sara Kent	Received 7/15/2025
110.	Exhibit 2t – Email from Gordon White	7/15/2025
111.	Exhibit 2u – Letter from Sonja Anderson	7/15/2025
112.	Exhibit 3 - Appeal of an Administrative Decision relating to the SEPA MDNS by Isha Alexander	6/3/2025
113.	Exhibit 4 - Appeal of an Administrative Decision relating to the SEPA MDNS by Raymond Alvarado	6/3/2025
114.	Exhibit 5 - Appellant's Motion for Summary Judgement, Isha Alexander, et al.	6/18/2025
115.	Exhibit 6 - Rescheduled Public Hearing Notice	6/20/2025
116.	Exhibit 7 - Notice of Appearance, Nancy Bainbridge Rogers and Simon Uppal for Mountain Stone Aggregate, LLC	6/20/2025
117.	Exhibit 8 – Applicant’s Motion to Dismiss SEPA Appeal	6/20/2025
118.	Exhibit 9 - Public Comment Email from Derek Johnson	5/27/2025
119.	Exhibit 10 - Affidavit of Hearing Notice Installation and Photo	6/24/2025
120.	Exhibit 11 - Appellant Alvarado Affirmative Defenses of Appeal Comment	6/9/2025
121.	Exhibit 12 - Appellant Alvarado MDNS Comments	6/10/2025
122.	Exhibit 13 - Appellant Alvarado Evidence	7/4/2025
123.	Exhibit 14 - Applicant email requesting to add additional documents to the record	7/8/2025
124.	Exhibit 14.1 - Mountain Stone Aggregates/Applicant’s Response to Motion for Summary Judgment	7/8/2025

125.	Exhibit 14.2 - A new map, titled <i>Vicinity and Project Area Map</i> . Using a base map from Attachment Z in the record, we created this map to clarify the location of the property, the proposed permit boundary, the proposed mine area boundary, and the existing mine area boundary.	Amended 7/7/2025
126.	Exhibit 14.3 - <i>Sound Analysis for Johnson Creek Quarry Expansion</i> , BRC Acoustics. This report is referenced in the Attachments to the Staff Report, including the MDNS, but we did not find a complete copy of this analysis in the Staff Report Attachments.	4/17/2021
127.	Exhibit 14.4 - Complete copies of the following groundwater documents. These documents are referred to in the County Staff Report and MDNS, and portions appear in pieces and different versions within the County's Attachments (see, e.g., Attachments l, q, r, s, and z) [NO DOCUMENT]	
128.	Exhibit 14.4a - <i>Ground Water Summary for Proposed 228 Acre Expansion</i> , Bennett Consulting	8/31/2021
129.	Exhibit 14.4b - <i>Complete Draft Workplan</i> , Insight Geologic	10/26/2022
130.	Exhibit 14.4c - <i>Groundwater Monitoring Report</i> , Insight Geologic	5/26/2023
131.	Exhibit 14.4d - <i>2024 Hydrogeologic Data</i> , Insight Geologic	Undated; Received 7/8/2025
132.	Exhibit 14.4e - <i>Contingency & Adaptive Management Plan</i> , RB Engineering. This version includes full copies of the maps included in this report.	October 2023; Updated February 2025
133.	Exhibit 15 - Kevin Hansen, County Hydrogeologist Resume	Received 7/14/2025
134.	Exhibit 16 – Appellants' Exhibit and Witness List	7/14/2025
135.	Exhibit 17 - Appellant Alvarado Testimony List	Received 7/14/2025
136.	Exhibit 18 – Christian L. Aldrich, Planning Manager Resume	Received 7/14/2025
137.	Exhibit 19 - Iona Park, Senior Consultant, Acoustics, Resume	Received 7/14/2025
138.	Exhibit 20 - Joanne Bartlett, Senior Wetland Biologist, Resume	Received 7/14/2025
139.	Exhibit 21 - Mark J. Jacobs, Resume	Received 7/14/2025
140.	Exhibit 22 - Robert Balmelli, Principal Engineer Resume	Received 7/14/2025
141.	Exhibit 23 - William E. Halbert Hydrogeologist Resume	Received 7/14/2025
142.	Exhibit 24 – Appellants' Reply in Support of Motion for Summary Judgement	7/14/2025
143.	Exhibit 25 - Appellant Alexander Closing Statement	Received 7/27/2025
144.	Exhibit 26 – Applicant's Closing Argument	7/29/2025
145.	Prehearing Order Setting Hearing Schedule and Agenda	6/10/2025
146.	Second Order Setting Hearing Schedule and Agenda	6/26/2025

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). The Hearing Examiner decision on Innocent Purchaser determination for a project action is final and may only be appealed to Superior Court in accordance with TCC 18.48.030.

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 or Innocent Purchaser determination)

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 **\$1,446.00** for a Request for Reconsideration or **\$1,176.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center at 3000 Pacific Ave SE, Suite 100 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 \$1,446.00 for Reconsideration or \$1,176.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.