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September 25, 2026

Sent via email

Travis Burns
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RE: *South Sound Bird Alliance et al. v. Thurston County and Black Lake Quarry LLC*
Growth Management Hearings Board Case No. 26-2-0013c

Dear Mr. Burns,

This letter responds to your letter of September 17, 2026 requesting further information from my client, Black Lake Quarry, LLC ("BLQ") to assess the County's future options and workload to achieve full compliance with the August 17, 2026 Final Decision and Order ("FDO") of the Growth Management Hearings Board ("GMHB") which invalidated portions of Ord. 16575 and Res. 16574 pertaining to the BLQ rezone. The County is required to demonstrate full compliance by February 16, 2027.

BLQ is willing, at its expense, to provide the County with supplemental and/or revised studies, information, and analysis necessary for the County to modify its rezone adoption to substantively comply with the stated deficiencies in the GMHB FDO, and therefore respectfully requests that the County allow that process to occur. As detailed below, BLQ intends to tailor any additional materials submitted to the specific deficiencies identified by the GMHB and will prepare drafts of any required analysis, including supplemental findings and conclusions, for County review. BLQ believes that this approach, combined with BLQ's payment of reasonable fees for staff time associated with the process, would minimize the impact on County resources, including staff workload.

The remainder of this letter provides an overview of the areas the GMHB found noncompliant with the GMA, the steps BLQ expects to take to address those deficiencies, and BLQ's anticipated timeline for completing that work.

I. DISCUSSION

A. Correcting the Area of the BLQ rezone to 247 acres.

The record before the GMHB for the BLQ rezone contained a discrepancy regarding the final intended area of the BLQ property to be rezoned. The adopted ordinance identified approximately 270 acres, which also included habitat belonging to endangered species and other critical areas. The actual intended area for the BLQ rezone as modified during the course of review was in fact 247 acres—the location of the mine itself. While both BLQ and the County argued that the Board of County Commissioners understood the correct 247-acre area when it adopted the rezone based on multiple references in the record, the GMHB relied upon the ordinance description of 270 acres in invalidating the County's action.

To address this factual discrepancy, BLQ will prepare a corrected exhibit and narrative accurately reflecting the final 247-acre BLQ proposal. We note that several of the issues the GMHB identified resulted from the 24 additional acres, which contained critical areas adjacent to the Black River including Oregon spotted frog habitat. Accordingly, correcting the record and ordinance language to accurately reflect the proposal's 247 acres will also work to address other compliance issues noted below.

B. Issue 4: Addressing Locational Guidelines Criteria

The GMHB found that the Board of County Commissioners failed to adequately consider the County's locational guidelines regarding minimal environmental constraints when adopting the Black Lake Quarry rezone. Specifically, the GMHB stated that the County did not provide findings regarding (1) critical area concerns associated with the Black River corridor and (2) how an RRI designation would not have significant adverse effects on surface water or groundwater. The FDO largely discusses the County's lack of findings, rather than concluding that any specific finding is or was inconsistent with the County's comprehensive plan.

BLQ intends to submit supplemental analysis to the County to support the rezone's consistency with the locational guidelines as to environmental constraints. BLQ anticipates that this supplemental analysis will support finding that the rezone can in fact occur with minimal environmental constraints.

First, as noted above, BLQ anticipates that clearly identifying the proper reduced acreage of the proposed rezone will eliminate many critical area concerns. In addition, BLQ will prepare and submit a more detailed analysis of all critical areas within the proposed rezone area including analysis relative to allowed RRI uses. This analysis will evaluate critical aquifer recharge areas ("CARAs"), steep slopes, high groundwater hazard areas, and critical habitat relative to the allowed RRI uses.

BLQ will also prepare supplemental technical analysis of potential impacts to

surface or groundwater associated with industrial uses, including as compared to the existing mine if fully developed, to support additional findings that RRI uses and the increase in impervious surface area (to 60%) can be supported (with application of existing development regulations) without significant adverse effects.

C. Issue 5: Compliance with County Land Use Policies.

i. Policy LU-1.B.10

The GMHB found that the Black Lake Quarry Rezone did not comply with Thurston County Comprehensive Plan Policy LU-1.B.10.

Policy LU-1.B.10 states:

> Rezoning of any parcel with a rural designation to a different designation should only occur when one or more of the following apply:
>
> a. Circumstances have substantially changed since the current land use designation/zoning was adopted and the definition, characteristics or locational guidelines for the current district no longer apply.
>
> b. The rezone would promote the general welfare of the affected community.
>
> c. The rezone would maintain or enhance environmental quality.
>
> d. Thurston County pursues a legislative rezone.

The GMHB ruled that the Black Lake Quarry rezone does not comply with subsections (a) through (c) of the policy. The GMHB found that subsection (d) does not apply to the rezone. BLQ notes that LU-1.B.10 only requires "one or more" of the rezone criteria exist – not all.

Regarding subsection (a), the GMHB found that no substantial changed circumstances exist because the existing designation of R 1/20 already permits mining as a special use. BLQ will submit additional analysis to support findings that circumstances regarding the use have in fact changed, including, but not limited to, the County's need for rural property to support rural resource industries.

Regarding subsection (b), the GMHB found that the Board of County Commissioners did not address whether the rezone would promote the general welfare of the affected

community, including nearby residents and the nearby National Wildlife Refuge. Information regarding impacts to the adjacent community is in fact within the existing record, but was not documented in the findings. BLQ will provide additional analysis and draft findings to address this criterion.

Regarding subsection (c), the GMHB found that a previous determination of nonsignificance could not establish that the Board of County Commissioners adequately considered whether the rezone would maintain or enhance environmental quality under the GMA. The supplemental analysis described above will further support draft findings to address this criterion.

ii. Policy LU-1.B.11

The GMHB also found that the Board of County Commissioners failed to consider Thurston County Comprehensive Plan Policy LU-1.B.11.

Policy LU-1.B.11 states:

> If rezoning is requested for a portion of a land use designation:
>
> a. The impact of a proposed rezone on landowners remaining in the original designation should be evaluated and considered;
>
> b. The proposed rezone should only be allowed if there is projected to be minimal adverse impact on neighboring landowners and on the continued use of a rural district for natural resource-based industries or conservation purposes;
>
> c. Regular, easily definable boundaries should be maintained; and
>
> d. The rezoning should not increase the demand for urban levels of service.

The GMHB found that the Board of County Commissioners did not consider impacts to neighboring landowners, including the National Wildlife Refuge. The GMHB also stated that there was no evidence that the Board of County Commissioners considered proximity to an interstate or state highway as a result of increased traffic in the area.

BLQ can supplement the record to correct this deficiency. Regarding traffic, BLQ will submit supplemental analysis highlighting the site's proximity and existing direct access to the interstate. BLQ will also propose draft findings which specifically address the elements of the policy supported by the existing record and additional analyses.

D. Proposed Timeline and Impacts on County Resources

BLQ proposes to prepare and submit the additional analysis, submittals, and draft findings for County review by **November 15, 2026**. Because these materials will largely be supplemental and clarify the existing record, BLQ anticipates that staff review will not take significant time to complete, and BLQ will organize and submit its materials with reference to the GMHB FDO as needed to facilitate review. As noted above, BLQ is also prepared to pay reasonable fees for all County staff time associated with this proposed compliance process.

II. CONCLUSION

As the County knows, BLQ made a considerable investment in the application process leading to the Board of County Commissioners originally approving the proposed rezone, and believes that the deficiencies which resulted in the GMHB's invalidation of the ordinance can be resolved through submittal of additional targeted information and preparation of more detailed findings for the Board's consideration. BLQ is confident that it can provide this information in a timely and efficient manner to allow the Board of County Commissioners to consider a modified ordinance in time to meet the County's required final compliance deadline. Please note that in making the request that the County engage in the compliance process, BLQ acknowledges and understands that the County maintains and reserves its sole discretion to ultimately take any resulting action.

I trust this response addresses the request made of BLQ. In light of the time constraints associated with the proposed schedule, BLQ requests that the County determine whether it will allow BLQ to proceed with the proposed compliance process by no later than October 12, 2026.

Sincerely,

DICKSON FROHLICH PHILLIPS BURGESS PLLC



HEATHER L. BURGESS
PARTNER

HLB/jw
cc: Client