

## **DECISION of the SNOHOMISH COUNTY HEARING EXAMINER**

DECISION DATE: August 29, 2011

PROJECT NAME: ***MENZEL LAKE GRAVEL***

APPLICANT/  
LANDOWNER: Menzel Lake Gravel, a division of Lake Industries, LLC  
Marc Kalkoske, President  
Land and Timber Services, Inc.  
1830 Colby Avenue, Everett WA 98201-2231

FILE NO.: 08-110459 LU

TYPE OF REQUEST: MAJOR REVISION - CONDITIONAL USE PERMIT (CUP)

**DECISION (SUMMARY): The request for a Major Revision to a CUP is Granted, subject to Preconditions and Conditions**

GENERAL LOCATION: 7800 Menzel Lake Road, Granite Falls, WA

PDS STAFF RECOMMENDATION: Approve the CUP subject to the recommended conditions

### **INTRODUCTION**

Menzel Lake Gravel ("MLG") is requesting a major revision to their CUP to continue and expand the use of a gravel mine near the City of Granite Falls, Washington. A portion of the land is designated as Rural Basic-5 Acres and a portion of the land is designated as Natural Resource Land with a Mineral Resource Overlay (MRO) according to the County's GMA Comprehensive Plan (GMACP). The current CUP for the existing property and operation expires in 2012. The proposal expands the operation to 141 acres, which includes areas that will be left undisturbed as permanent Native Growth Protection Areas (NGPAs).

The City of Granite Falls filed a timely SEPA appeal challenging the issuance of a Determination of Nonsignificance (DNS) by the Department of Planning and Development Services (PDS) for the project on various grounds. (Exhibit L.1) A combined Type 1 appeal and Type 2 public hearing on the CUP was held over a period of three days on January 20, 26 and 27, 2011. After the public hearing, the Hearing Examiner entered a decision on March 10, 2011, granting the City's SEPA appeal, and remanding the SEPA determination to PDS for consideration of certain significant adverse environmental impacts which were outlined in the decision. No decision on the major revision to the CUP was made at that time, pending further SEPA proceedings. On March 22, 2011, PDS withdrew the Revised DNS. MLG submitted a revised SEPA Checklist on April 22, 2011. (Exhibits P.6 and P.7) On June 21, 2011, PDS issued a new Mitigated Determination of Significance (MDNS), which included mitigation offered through a Voluntary Mitigation Agreement (VMA) reached as a result of a settlement agreement between MLG and the City, relating to the

appropriate mitigation required to address the significant adverse environmental impacts identified in the Examiner's earlier decision. Proper public notice of the MDNS and an opportunity for public comment was given. No appeal of the MDNS was filed. (Exhibits P.13, P.14, P.15, P.16 and P.17) On July 28, 2011, PDS issued a Supplemental Staff Recommendation. (Exhibit P.18) On August 4, 2011, the Examiner held an additional public hearing on the CUP major revision.

1. Duana Kolouskova of Johns, Monroe, Mitsunaga, Kolouskova, PLLC, Rob Hild, from Lake Industries, LLC, and Marc Kalskoske from Land and Timber Services, Inc. appeared on behalf of the Applicant, MLG.
2. Ed Caine appeared on behalf of PDS.
3. Paul McMurray, City Attorney, appeared on behalf of the City of Granite Falls.

**NOTE:** For a complete record, an electronic recording of the hearing in this case is available in the Office of the Hearing Examiner.

### **FINDINGS OF FACT**

Based on a preponderance of the evidence of record, the following Findings of Fact are entered.

1. The information set forth in the introductory paragraphs is incorporated herein by this reference. All of the exhibits shown on the master list of exhibits, including new Exhibits N.1 through N.8, O and P.1 through P.20 were entered into the record as evidence, along with the testimony of witnesses presented at the open record hearing and the tape log. The entire record was considered by the Examiner in reaching this decision.
2. MLG is requesting a major revision to their CUP (No. 03-106230-LU) for an existing commercial mineral excavation site to increase the existing 51 acre mining site by 232 acres for a total of 283 acres. Expansion of mining activities will be to the north, west and south. Of the 283 acres, 141 acres will be placed in permanent Critical Area Protection Area (CAPA) tracts. A total of 142 acres are proposed for mining activities, which is an expansion of 91 acres in addition to the existing 51 acre operation. The expansion is anticipated to provided an estimated life of potentially 75 to 100 years for the operation. After mining operations have ceased, the reclamation plan, developed with the Washington State Department of Natural Resources, will be fully implemented. The proposed expansion area is divided into six sections. Mining is proposed to begin in Section 1. Following completion of mineral extraction, restoration will commence, including construction of a sound berm. Mining is proposed to proceed through the successive sections, wherein 5 acres will be cleared, 5 acres will be actively mined, 5 acres will be receiving reclamation material, and 5 acres will be planted with grass and trees. It is anticipated that no more than 20 acres of the site will be actively mined at any time with additional areas of the site used for operational activities.
3. The application was originally submitted to PDS on November 18, 2008. For the next two years, the Applicant submitted various documents to PDS for review which were found to be insufficient and required additional work and re-submittal. On September 27, 2010, the Applicant's materials were determined to meet the regulatory requirements for the CUP. As of the original hearing date, 271 days of the 120-day review period have elapsed. The 120-

day clock was exceeded. The primary delay was related to attempts to address the requested improvements by the City of Granite Falls. Project delay also resulted from project reviews by PDS.

4. The site consists of fifty-one (51) acres in existing commercial mineral excavation (Exhibit A.6). The major revision would expand the site to an additional 232 acres, which is forested, for a total of 283 acres. Currently, access to the site is off of Menzel Lake Road. The access will be relocated approximately 100 feet to the northwest. The area of current mining activities is zoned Mineral Conservation (MC). The areas proposed for future mining are zoned R-5, with a portion of it designated as MRO in the Comprehensive Plan and the Future Land Use Map. Some on-site areas are not included within the MRO designation, but mining activities are not proposed in those areas. These areas are shown on the site plan as designated NGPAs. The NGPAs include both wetlands and streams (which are critical areas), and their proposed buffer areas. Adjacent properties are zoned R-5 and includes both residential and undeveloped parcels.
  
5. On July 31, 2002, Snohomish County and the City of Granite Falls entered into an Interlocal Agreement on Reciprocal Mitigation of Transportation Impacts (the "ILA"). (See, Exhibit L.2(E)) One of the purposes of the ILA is to provide a framework for the reciprocal review of interjurisdictional transportation system impacts resulting from land development and the imposition of mitigation, where needed, to address such impacts. *Id.* The ILA is discussed in detail in the Examiner's earlier decision. (Exhibit O.1) In short, the ILA provides the legal authority for the City to request mitigation for identified significant adverse environmental impacts of developments affecting its jurisdiction. Here, the City has made such a request for mitigation of traffic impacts arising out of the proposed major revision to the CUP. Subsequent to the granting of the City's SEPA appeal, MLG and the City entered into a VMA which provides for the mitigation of certain significant adverse environmental impacts identified in the record by the City and public comment, resulting from the proposed major revision to the CUP. The VMA provides a mechanism to address (a) traffic conflicts identified at the intersection of Alder Avenue and Pioneer Street caused by an inadequate turning radius; (b) an investigation into the need for sidewalks along Alder Avenue within the City limits to protect pedestrians and school children from increased truck traffic; and (c) impacts to the integrity of the pavement and the need for maintenance, repair and replacement of City streets from increased truck traffic. (Exhibit P.13) The VMA requires MLG to provide the traffic intersection improvements at Alder Avenue and Pioneer Street within three years or else the City will initiate annexation and undertake the improvements itself. Additionally, MLG has agreed to pay a Tonnage and Yardage Fee to the City as provided in the VMA. (Exhibit P.13) With funds received from the Tonnage and Yardage Fee Agreement, the City will have the sole discretion to determine the need and timing for improvements to the City's streets designated as truck routes, which may include reconstruction, road overlays and/or the installation of sidewalks for pedestrian safety. *Id.* Having examined the VMA in light of the City's earlier SEPA appeal and the decision of the Examiner granting such appeal, the Hearing Examiner now finds that the VMA addresses the significant adverse environmental impacts identified by the City and in public comment, including concerns raised by the Granite Falls School District. (See, Exhibit O.1) The Examiner further notes that the City of Granite Falls now has no objection to the approval of the major revision to the CUP. Finally, the Examiner finds that the VMA supports PDS's SEPA determination of a MDNS, and no appeal of the MDNS was filed. (Exhibit P.14)

6. Issues of Concern.

- A. Public Agency Review. The only remaining issue of concern identified during the remand period was an issued raised by the State Department of Archaeological and Historic Preservation (DAHP). No issues of concern were identified by any other reviewing agencies. The Applicant has performed a site investigation to determine if any archaeological artifacts are present on the site and found no such artifacts. At the public hearing, MLG objected to the DAHP's raising of this issue as untimely and noted that the record was closed with the exception of the addition of new information gathered as part of the SEPA remand process. The Examiner agreed and sustained the objection.
- B. Citizens. PDS received numerous comments from citizens, groups and agencies in response to the proposed major revision to the CUP. The Tulalip Tribes provided comments (Exhibit H.13) and expressed concerns about: (a) potential adverse impacts to fish; (b) provision of adequate fueling and maintenance stations for the mining activities and gravel trucks; (c) the extent of clearing; (d) the reclamation plan; and (e) groundwater impacts and the accuracy of the groundwater elevation. Each of these issues was addressed by PDS, as shown in its Staff Report (Exhibit K). Additional citizen comments were received (Exhibits I.1 through I.16). The Examiner finds that PDS adequately addressed each response as shown in the record and in its Staff Report. (Exhibit K).

7. Approval Criteria. Since the area of mining activity is proposed to be greater than 20 acres, a CUP is required, as well as demonstrated compliance with Chapters 30.31D and 30.42C SCC (SCC 30.31D.030). As noted above, the requirements of SEPA have been met. The Examiner next considers the requirements of the performance standards set forth in Chapter 30.31D SCC and the CUP requirements of Chapter 30.42C SCC.

7.1 Mineral Extraction Performance Standards. (Ch. 30.31D SCC)

7.1.1 Eligibility for Expansion - SCC 30.31D.010(3)(c) allows expansion of existing, legally established mineral operations onto adjacent undesignated land where a portion of the existing site has been designated as mineral resource land or zoned MC. The existing mineral operation was approved under two previous CUPs (ZA 9212225 and 03-106230-LU). The existing mineral extraction operation is on lands that are zoned MC, and the proposed expansion of mineral extraction has an MRO designation on the Future Land Use Map. Therefore, the site meets the applicability requirement for mineral extraction and the expansion of current operations.

7.1.2 Performance standards (SCC 30.31D.100) In granting CUPs and setting performance standards for excavations in land zoned MC or land regulated solely by a CUP, the following conditions shall apply in all cases except when more restrictive conditions are imposed by the hearing examiner:

- (1) The operator shall bury or remove all metal, lumber or other refuse on the site in a method approved by the hearing examiner. *A condition has been recommended which would impose this requirement on the CUP.*
- (2) After completion of excavation operations, the operator shall dismantle and remove within three months all equipment introduced to the site in support of

the operations, with the exception of equipment necessary for reclamation, which equipment shall not be removed until such reclamation is completed to the satisfaction of the state or local authorities. This three-month period shall not be assumed to include time between projects or times when the plan is temporarily inoperative due to economic, weather or other similar conditions recognized as reasonable by the hearing examiner. Such temporary discontinuance of operations shall not be the cause for removal of equipment. *A condition has been recommended which would impose this requirement on the CUP.*

- (3) All excavation operations and trucking directly related to such operations may be permitted only between the hours of 7:00 a.m. and 5:30 p.m., Monday through Saturday, unless the hearing examiner determines at a public hearing that no nuisance exists, or that unusual and justifying circumstances are present, in which case the relaxation of this regulation shall terminate when such conditions and circumstances are deemed by the hearing examiner to no longer exist. *A condition has been recommended which would impose this requirement on the CUP.*
- (4) If property to be developed for excavation has an exterior boundary line which shares a common property line with developed property, or if in the judgment of the hearing examiner, the nature and location of the operation is such as to constitute a hazard to public safety, then a solid wall or fence no less than five feet in height shall be installed and maintained no closer than 50 feet from the excavated area. All openings in the fence shall be barred by locked gates when the permittee or his agent is not on the premises. *A barrier fence is not proposed. The area of excavation is separated from the property boundaries by a minimum distance of 500 feet to the north, west, and south. Separation from the properties to the east are as little as 50 feet for the area of current mineral extraction, but is in excess of 200 feet in width along the eastern border of the area proposed for expanded operations. PDS has determined that the barrier fence is not necessary.*
- (5) The area shall be posted with signs having letters at least three inches high and two inches wide, giving clear warning of the dangerous conditions resulting from the excavation. Said signs shall be no farther than 50 feet apart around the periphery of the subject property and shall be maintained in good repair until excavation and reclamation operations are completed. *A condition has been recommended which would impose this requirement on the CUP.*
- (6) A copy of the approved excavation and reclamation plans and specifications for reclamation of excavations not regulated by the state pursuant to chapter 78.44 RCW shall be kept on site at all times during the progress of the excavation operation. *The reclamation plan is regulated by RCW 78.44. The reclamation plan was developed between the state Department of Natural Resources and the operator. Therefore, this condition is inapplicable.*
- (7) In no case shall mineral operations impair lateral support or cause earth movements or erosion to extend beyond the exterior boundary lines of property being excavated. *A condition has been recommended which would impose this requirement on the CUP.*

- (8) Impacts resulting from traffic generated by mineral operations shall be addressed pursuant to chapter 30.66B SCC. *The project has been evaluated for compliance with Chapter 30.66B SCC as further described below.*

7.1.3 Landscaping requirements (SCC 30.31D.110) Landscaping shall be in accordance with SCC 30.25.027. That section provides:

Whenever property developed for excavation is adjacent to developed residential property, public roads, streets or highways, streams, lakes or other public installations, there shall be installed and maintained or cultivated in addition to any required fence, a view-obscuring planting screen at least 50 feet in width, in a location to be determined by the hearing examiner. A planting screen shall be shrubs, bushes or trees which shall be selected to be evergreen, indigenous, fast-growing, compatible with the soil, and on the basis of size, form and minimum maintenance requirements. The planting screen shall be planted according to acceptable practice in good soil, irrigated as necessary and maintained in a good condition at all times at the expense of the operator. A required view-obscuring planting screen shall be installed as a yard improvement at or before the time excavation operations commence or within a reasonable time as determined by the hearing examiner, giving due consideration of local planting conditions. A view-obscuring fence may also be required by the department on the interior edge of the planting screen and, if required, shall satisfy the requirement of SCC 30.31D.100(4).

Here, the proposed excavation will be located in forested areas at least 50 feet from exterior lot lines. Existing vegetation will provide a view-obscuring planting screen.

7.1.4 Setbacks (SCC 30.31D.120) - Mineral excavation and processing operations, as well as related structures and buildings, shall be set back in accordance with SCC 30.23.110(26). Here, all excavation operations will be located at least 50 feet from the subject site's exterior property lines and no structures are proposed to be closer than 150 feet from residential property.

7.1.5 Protection of Water Quality – (SCC 30.31D.130) The Applicant is required to meet the following three standards:

- (1) Operators shall divert or protect all natural drain courses to prevent pollution or reduction of natural flow, shall impound runoff as necessary to hold run-off to levels existing prior to the introduction of excavation operations, shall protect streams and grounds from acid-forming or toxic materials exposed or produced by excavation operations, shall seal off, to the extent directed by the hearing examiner, any breakthrough of acid water creating a hazard, and shall not allow water to collect nor permit stagnant water to remain in excavations. Wherever possible, the operator shall refrain from disturbing natural drainage course, streams, rivers, and lakes. Here, the Applicant proposes that stormwater will either be infiltrated or dispersed and allowed to naturally infiltrate. Critical areas have been preserved and protected in dedicated NGPAs. PDS has determined that the project complies with this requirement.

- (2) The Applicant is required to provide a hydrogeologic site evaluation pursuant to Chapter 30.64 SCC. The evaluation shall identify an adequate separation between the bottom of the excavation and the groundwater table. Exhibits C.3, C.4, and C.5 address hydrogeologic conditions and groundwater elevations. PDS has evaluated the documents and has determined that the project complies with this requirement.
- (3) Pursuant to SCC 30.31D.220, the approval authority may require summer testing of groundwater levels and groundwater quality. Exhibit C.4 is a groundwater monitoring plan.

7.1.6 Blasting – (SCC 30.31D.140) - No blasting is proposed for this operation, and no blasting has occurred with the current mining operations. The citizen complaints regarding blasting at the Menzel Lake Gravel operations were actually determined to have occurred from another nearby gravel site, Meridian Aggregate, which is under separate ownership and control.

7.1.7 Air Quality – (SCC 30.31D.145) - Extraction and processing shall be conducted to comply with state air quality standards and any permit requirements as set forth by the Puget Sound Clean Air Agency. The hearing examiner may, as a condition of approval, require the use of best management practices (such as watering of the site and equipment) to control emissions of suspended particulates. *PDS believes that the provided buffers and setbacks will minimize any problems with dust particles.*

7.1.8 Underground Excavation – (SCC 30.31D.150) This section does not apply to this application. The operations are that of a surface mine, with no underground excavations.

7.1.9 Grading, Reclamation and Topsoil Retention - (SCC 30.31D.160) – The Applicant must also meet the following standards:

- (1) Where applicable pursuant to SCC 30.63B.020, excavation and processing of minerals, and other mining-related development activities, including but not limited to road construction, drainage facilities and detention ponds, and reclamation of mining sites not subject to chapter 78.44 RCW, shall be in accordance with chapter 30.63B SCC. Mineral extraction activities are exempt from Land Disturbing Activity (LDA) regulations. (SCC 30.63B.020) Ancillary activities including but not limited to road construction, drainage facilities, and reclamation of the mining site are subject to Chapter 30.63B SCC.
- (2) Topsoil that exists on a site shall be retained on the site in sufficient quantities to ensure an adequate supply for reclamation purposes for excavations not regulated by the state pursuant to chapter 78.44 RCW. This issue has been addressed by the Applicant in its preparation of a reclamation plan which is regulated by the Washington State Department of Natural Resources (DNR). Therefore, no additional requirements are imposed by the County.

Based upon the foregoing Findings of Fact (Nos. 7.1.1 through 7.1.9), the Hearing Examiner finds that, with the imposition of the required conditions, MLG can meet the performance standards set forth in Ch. 30.31D SCC.

7.2 Conditional Use Permit. CUPs are governed by SCC 30.42C.100. This section provides that the hearing examiner may approve, or approve with conditions, a CUP only when all the following criteria are met:

- (a) The proposal is consistent with the comprehensive plan;
- (b) The proposal complies with applicable requirements of this title;
- (c) The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
- (d) The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

In issuing a CUP, the Hearing Examiner has broad discretion to impose conditions of approval. The hearing examiner may:

- (1) Increase requirements in the standards, criteria, or policies established by [Title 30 SCC];
- (2) Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
- (3) Require structural features or equipment essential to serve the same purpose set forth in 30.42C.100 (2)(b);
- (4) Impose conditions similar to those set forth in items 30.42C.100(2)(b) and 30.42C.100(2)(c) as may be deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not in connection with action on a CUP, reduce the requirements specified by [Title 30 SCC] as pertaining to any use nor otherwise reduce the requirements of [Title 30 SCC] in matters for which a variance is the remedy provided;
- (5) Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;
- (6) Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
- (7) Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
- (8) Impose any requirement that will protect the public health, safety, and welfare.

7.2.1 Consistency with the Comprehensive Plan (SCC 30.42C.100(1)) -- The Applicant has adequately demonstrated that the proposed application is consistent with the County's Comprehensive Plan. The introductory comments related to mineral lands begin on page LU-62 of the Comprehensive Plan. The mineral resource lands sub-element is intended to: (a) identify and designate mineral resource lands; (b) ensure that these lands continue to be available for mining; (c) minimize the impacts of mining on the environment, communities, and other land uses; and (d) ensure that mining sites are left in a condition compatible with subsequent uses. Here, the subject property is largely forested and rural, subject to the

MRO designation in the Comprehensive Plan. The MRO land designation is an overlay with forest resource or rural designations underneath. Where mineral resources are designated in forest areas, mineral resource uses are allowed with appropriate permits. Where mineral resources are designated in rural areas, mineral resource uses will be preferred and other uses which would preclude future mineral extraction will be limited or required to utilize innovative site design techniques to preserve the resource deposits for future use. Here, mineral extraction and mining operations are preferred as an on-site use. The subject property is designated Rural Residential - 5 (RR-5: 1 du/5 ac). The implementing zone in this designation will continue to be the R-5 zone. The portion of the site that is proposed for mineral extraction is designated as MRO. This designation is an overlay to the Future Land Use Map. Designated Mineral Resource Lands include those lands identified through a comprehensive inventory and assessment process as not being characterized by urban growth and as having long-term significance for the extraction of minerals. The designation includes bedrock, sand/gravel and precious metals mineral resources. The implementing zone in this designation is dependent on the underlying zone.

PDS provided additional detailed analysis of the applicable General Policy Plan provisions related to MRO designations in its Staff Recommendation (Exhibit K). Accordingly, the Examiner finds that the proposed expansion of the existing MLG operations, as conditioned, is consistent with the Comprehensive Plan.

**7.2.2 Compliance with Chapter 30.42C.100(2):** The proposal complies with applicable requirements of Chapter 30.31D, Mineral Conservation Zone, as demonstrated above, which regulations implement the goals and policies of the Comprehensive Plan (e.g., Goal LU 9 et seq.), relative to mining and mineral extraction, as well as other applicable requirements of Title 30 SCC, as further discussed below.

**7.2.2.1 Zoning Regulations.** The subject property is zoned MC and R-5, with a MRO designation in the Comprehensive Plan and the Future Land Use Map over a portion of it. Mining activities are not proposed in the areas that are not subject to the MRO. Adjacent zoning is R-5 and includes both residential and undeveloped parcels.

**7.2.2.2 Development Regulations.** Finally, the Applicant must demonstrate that they have met all other applicable development regulations applicable to the proposed use.

**A. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC)**

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The subject property is located within Transportation Service Area (TSA) B.

- 1. Road System Impacts [SCC 30.66B.310]** A development shall mitigate its impact upon the future capacity of the Snohomish County road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development. On June 4, 1997, the subject site received approval of a conditional use permit for a new gravel pit (PFN ZA

9212225). The CUP was revised in a decision dated November 5, 2004 (03-106230-LU, Exhibit A.6). Now the Applicant desires to raise the maximum number of loads per day to 100 trucks per day (200 ADT). The Applicant's traffic study dated November 14, 2008, indicates that the site should be credited for 52 loads, based on a March 1996 traffic study, which is acceptable to PDS. Mitigation will be based on a net difference of 148 new ADT at a rate of \$343.00/ADT. The impact fee for the subject proposal is \$50,764.00. PDS has included a recommended precondition to require the mitigation fees and a recommended precondition to record the developers Chapter 30.66B SCC mitigation obligations with the County Auditor. This figure does not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required to be a precondition to approval of the CUP. The Applicant's proposed new peak hour trips are 14 AM peak hour trips and 1 PM peak hour trip. This estimate is an extrapolation of the existing trips on the site.

2. **Concurrency Determination (SCC 30.66B.120)** The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and has been deemed concurrent as of January 22, 2009. The concurrency determination approval will expire on January 22, 2015, six years from the date concurrency was given. Consistent with DPW Rule 4225.070, November 18, 2008, is the date for which concurrency analysis is based (i.e. the concurrency vesting date). Development generating 50 or fewer peak-hour trips in TSA with one or more arterial unit in arrears, SCC 30.66B.160(2)(a). The subject development is located in TSA B which, as of the date of submittal, had arterial unit 238 in arrears. Based on peak-hour trip distributions, the subject development will NOT add three (3) or more directional peak-hour trips to this unit. Pursuant to SCC 30.66B.160(2)(a) the development is determined concurrent. The development generates 14 AM peak-hour trips and 1 PM peak-hour trips which is not more than the threshold of 50 peak-hour trips (in which case the development would also have to be evaluated under SCC 30.66B.035).
3. **Inadequate Road Condition (IRC) [SCC 30.66B.210]** Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC. Snohomish County Traffic Operations performed an IRC evaluation from south of the entrance to the subject site to the Granite Falls city limits. It was found that an IRC does not exist on this section of roadway. The subject development proposal will not impact any IRC locations identified within TSA B with three or more PM peak hour trips, nor will it create any. Therefore, mitigation is not required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.
4. **Frontage Improvement Requirements [SCC 30.66B.410]** All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road.

The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable. DPW Rule 4222.020(1) requires full rural frontage improvements along the subject parcel's frontage on Menzel Lake Road which consist of:

- (a) Asphalt concrete pavement consisting of 12 feet in width from roadway centerline with an 8 foot paved shoulder; and
- (b) The area that will require frontage improvements is the area included in the subject property as modified by the Boundary Line Adjustment (BLA) under 09-106003-BA.

Menzel Lake Road, on which the development's frontage improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credits towards the Applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable. PDS has included a recommended condition to require construction of frontage improvements prior to any expansion of mining activities and prior to final approval or any occupancy related to the building permit.

**5. Access and Transportation Circulation [SCC 30.66B.420]** Menzel Lake Road is classified as a Major Collector Arterial on the adopted Snohomish County Arterial Circulation map, effective February 1, 2006. The posted speed for Menzel Lake Road is 35 mph. The existing access is located on Menzel Lake Road approximately 400 feet north of Scotty Road. Sight distance was checked at this location and was found to meet minimum EDDS 3-08 requirements. The Applicant proposes to use the existing access onto Menzel Lake Road, with a minor relocation to the northwest. The Applicant's traffic study dated November 14, 2008, addressed items identified in Rule 4231 for impacts to the County road system from a mineral operation to the satisfaction of the County. The traffic study indicates that no off-site improvements should be required. The intersection of Menzel Lake Road and Waite Mill Road will be improved by a County project. This improvement is to adjust the vertical alignment of intersection. The project is funded and is expected to be completed in 2014.

**6. Right-of-Way Requirements (SCC 30.66B.510 and 30.66B.520)** A development shall be required to dedicate, establish or deed right-of-way to the county for road purposes as a precondition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development. The road serving this development, Menzel Lake Road, is designated as a Major Collector Arterial and requires a right-of-way width of 40 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development will be required to deed 10 feet of additional right-of-way. The needed right-of-way is not adequately shown on the site plan. A precondition of approval will be imposed requiring MLG to dedicate 10 feet of additional right-of-way to the county. Menzel Lake Road is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credit towards the Applicant's impact fee for the deeded right-of-way that is more than 30 feet from centerline is not applicable.

7. **Impacts to State Highways [SCC 30.66B.710]** The Applicant's traffic study (Exhibit C.1), and their offer indicate that no State projects will be impacted by three or more directional peak hour trips (PHTs) and therefore will not require any mitigation to the State. The Washington State Department of Transportation (WSDOT) has indicated that the State agrees that no State projects will be impacted by three or more directional PM PHTs. (Exhibit H.7) As such, mitigation is not required for State highways.
8. **Impacts to City Streets and Roads in Another County [SCC 30.66B.720]** Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of a Reciprocal Traffic Mitigation Interlocal Agreement (ILA) between the County and the other jurisdiction(s). This development is subject to SEPA and therefore is subject to the ILA between Snohomish County and the City of Granite Falls. As noted above, MLG has executed a VMA with the City of Granite Falls relative to its proposed new impacts on City streets and roads. Therefore, the Examiner will include the required mitigation set forth in the VMA as a required condition of approval.
9. **Transportation Demand Management (TDM) (SCC 30.66B.630)** This proposal lies outside of the Urban Growth Area. Therefore, the provisions of this section do not apply.
10. **Haul Route Agreement (SCC 13.40.020)** The proposed expansion of MLG's operations requires a Type B4 Permit (a haul route agreement) for commercial hauling within the County right-of-way, given that it is likely to cause extraordinary damage or accelerated damage to county roads. PDS has included a recommended precondition of approval to require the applicant to obtain an approved "Haul Route Agreement" from the county.

**B. Drainage and Grading - Ground Disturbing Activity (Chapters 30.63A, 30.63B, and 30.63C SCC)**

Commercial operations involving mining, quarrying, excavation, processing, or stockpiling of rock, sand, gravel, aggregate or clay are exempt from the LDA code SCC 30.63B.020, if authorized by a CUP. Snohomish County does regulate infiltration ponds, sedimentation ponds, and access roads to those facilities under Chapter 30.63B.020(2) SCC because drainage is being collected and concentrated from greater than 5,000 square feet of area. Here, mining operations are proposed on 142 acres of the site. Soils in the proposed excavation area are classified as Everett gravelly sandy loam and Winston gravelly loam. The western, southern, and northern edges of the proposed excavation are bounded by wetlands and or streams. Downstream drainage conditions are described starting on page 1 of the Full Drainage Report (Exhibit C.2). Both downstream drainage corridors drain to the Pilchuck River. The site is split into four drainage basins (A-D) which are the areas used for analysis of the reclaimed condition. Stormwater within Basins A and C will be directed to infiltration basins. During the mining operation temporary infiltration ponds will be used to address any surface runoff. The other two drainage basins, B and D, are proposed to disperse runoff into the buffer for infiltration as a low impact development technique. A waiver to apply the dispersion section of the 2005 Department of Ecology (DOE) Stormwater Management Manual for Western Washington has been approved (Exhibit G.2). The runoff is proposed to be dispersed thru the buffer with a minimum width of 50 feet. The full

drainage plan (Exhibit C.2) reports the soils in the buffer are 2 to 6 inches of duff over gravelly loamy sand. The engineer has provided sufficient engineering justification to provide approval for accepting dispersion as a storm drainage control BMP. The proposed expansion is located in an area designated as the Newberg Sole Source Aquifer and Recharge Area by the EPA. Per Chapter 30.62C SCC, a hydrologic report in accordance with SCC 30.62C.140 was required (Exhibit C.3). The potential for increased turbidity in the shallow groundwater system is low due to maintaining a 10 foot separation above the maximum seasonal high ground water elevation with the excavation. Site specific erosion control methods will also contribute to a reduction in erosion.

An addendum to the Revised Geologic and Hydrogeologic Study was submitted by the Applicant on behalf of Associated Earth Sciences, Inc. on May 24, 2010 (Exhibit C.9), which addresses spill response for the release of petroleum hydrocarbons used to fuel and maintain mine machinery. Implementation of the spill plan and site best management practices are recommended conditions of approval. It is the opinion of Associated Earth Sciences that the potential for ground water quality impacts from the release of petroleum hydrocarbons is low. It is a further recommended condition that two down gradient monitoring wells to monitor ground water quality impacts be installed. The proposed groundwater monitoring plan (Exhibit C.4) includes specific sampling and testing methodology. PDS concurs and recommends adopting the monitoring report as a recommended condition of approval.

The revised hydrogeologic report (Exhibit C.9), under the site hydrology section, states that the shallow ground water system in the recessional outwash sand and gravel deposits in the active mine area and proposed expansion area are not continuous across the site. The report shows the boundaries of the shallow groundwater system. The elevation of contact between the fine-grained unit, interpreted to be pre-Vashon-age drift, and the recessional outwash sand and gravel deposits appears to control the limits of the shallow ground water system. The recessional outwash material will be mined down to the pre-Vashon glacial drift, which is outside of the shallow groundwater system. The pre-Vashon glacial drift is non commercial material. Following mineral extraction, the area will be replanted as a part of the reclamation plan. The Wash Plant Water Balance Report by Associated Earth Sciences, Inc. (Exhibit C.7) addresses wash plant ground water withdrawals, site mining, and the resultant impacts on recharge of the shallow ground water system. The conclusions of the report are that the wetland complexes at the mine appear to be an expression of the water table in the shallow ground water system in the recessional outwash deposits. It is concluded that clearing of the land will actually result in a net increase in annual recharge to the shallow ground water and wetland system. The seasonal high ground water elevations at the Menzel Lake Gravel mine was submitted (Exhibit C.5). The report provides a predicted seasonal high groundwater contour map. The predicted seasonal high ground elevations are based on our evaluation of the available historic ground water levels for monitoring wells in the active mine area, ground water levels observed in the explorations completed in the proposed mine expansion area, and elevations of the on-site wetland complexes.

A proposed Ground Water Monitoring Plan was submitted to PDS by Associated Earth Sciences on May 24, 2010 (Exhibit C.4). The plan provides for ground water level monitoring and ground water quality sampling. Ground water elevations will be collected monthly with water quality samples taken quarterly. Quarterly reports are required to be submitted to PDS for review. PDS has included a recommended condition to require that monitoring wells MW-5 and MW-6 be constructed and for the monitoring reports include data

on water quality prior to excavation in the expansion authorized by this proposal. The gravel excavation is proposed to be a minimum of 10 feet above those elevations which represent the shallow ground water system as shown on Figure 2.

Geologic hazards (Chapter 30.62B SCC) and slope stability were addressed in the Revised Geologic and Hydrogeologic Study by Associated Earth Sciences, Inc. (Exhibit C.3). The report identifies landslide hazard areas located outside the east boundary of the proposal on west facing slopes. The report identifies no landslide hazards present in the proposed mine expansion area. It also states the mine does not meet the criteria for erosion, seismic, mine, or volcanic hazards as set forth in Chapter 30 SCC. Pre-mining and post-mining/pre-reclamation slopes were analyzed for stability. In all cases the results indicated that modeling resulted in factors of safety well with acceptable factors of safety.

PDS found that subject to the recommended conditions, the project meets the applicable requirements and that the proposed expansion of the mining operations will not result in significant adverse environmental impacts.

**C. Critical Areas Regulations** (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC)

The subject property contains three dominant drainage corridors with a total of 14 wetlands, 3 Type F streams and 1 Type NS stream. Vegetation on the site is composed of a fairly young managed forest dominated by Douglas Fir (estimated at approximately 60 years of age). It appears to PDS staff that the site was reforested after logging with minimal thinning. The trees are tall with a girth and growth form that indicates competition for available light. MLG currently operates a gravel mine on approximately 51 acres at this location and is proposing an expansion of 91 acres to the north, south and west of the current operation. MLG has 141 acres under their ownership which is proposed to be protected in perpetuity with a CAPA designation that includes the wetlands, streams and associated buffers. The project was reviewed under the Innovative Development Design provisions of SCC 30.62A.350 per the Applicant's request that allows deviation from the standards of Part 300 of Chapter 30.62A SCC. Existing gravel roads that lie within the proposed CAPA tract are proposed to remain. Access easements are in place to provide emergency vehicle access between the adjacent plat of Pilchuck East and Menzel Lake Road. Utility easements are also in place along the roads to provide future utility corridors, if necessary. The roads are proposed to be maintained to remain in their current condition and as such are excepted from CAPA restrictions per SCC 30.62A.510(3)(k).

An eight-inch water main is located on the adjacent property to the west, ending on-site in the western portion of the subject property. MLG has provided buffer restoration provisions, detailed in Exhibit C.6, in the event that future needs require more water than the existing on-site well can provide. Permanent fencing and signage are proposed along the CAPA boundary to clearly demarcate the CAPA tract boundary reducing the likelihood of disturbance while allowing unimpeded wildlife movement.

As noted above, the project was reviewed under the Innovative Development Design provisions of Chapter 30.62A.350 SCC per the Applicant's request. Innovative development design allows deviation from the standards of Part 300 of Chapter 30.62A SCC. A wetland and buffer functions and semi-quantitative assessment was conducted by Wetland Resources, Inc. to demonstrate that the Innovative Development Design as proposed will achieve protection equivalent to the treatment of the function and values of the critical areas which would be obtained by applying the standard prescriptive measures contained in

Chapter 30.62A SCC (Exhibit C.6). Compared to the pre-mitigation functions and values summarized in Table 3 on page 16 of Exhibit C.6, a net increase (75.6 vs. 74.7) in the quantitative score for functions and values will be achieved by the proposal. PDS staff accepts the quantitative assessment as documented in the report. The Applicant has demonstrated compliance with Chapter 30.62A.350 SCC (Innovative Development Design). PDS has concluded that the project is consistent with the purpose and objectives of the chapter to safeguard the public health, safety and welfare. The Examiner has included conditions to implement the critical area requirements.

Based on the foregoing Findings of Fact, the Examiner finds that the proposed major revision to the MLG CUP meets the requirements of Title 30 SCC.

7.2.3 The proposal will not be materially detrimental to uses or property in the immediate vicinity. The Hearing Examiner has considered the proposed application in light of the Findings of Fact set forth in Sections 7.2.1 and 7.2.2 herein, and finds that the County's regulations, performance standards and conditions of approval ensure that the proposed gravel mine expansion will not be materially detrimental to uses or properties in the immediate vicinity.

7.2.4 The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property. The Hearing Examiner has considered the proposed application in light of the Findings of Fact set forth in Sections 7.2.1 and 7.2.2 herein, and finds that the County's regulations, performance standards, and conditions of approval ensure that the proposed gravel mine expansion responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

Based on the foregoing Findings of Fact in Sections 7.2, the Hearing Examiner finds that the proposal meets the requirements of the County's CUP regulations.

8. Any Finding of Fact which should be deemed a Conclusion of Law in this Decision is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over the CUP application pursuant to Ch. 2.02 SCC and SCC 30.72.020.
2. Based upon the entire record and the Findings of Fact herein, the Examiner concludes that the application has met all of the required approval criteria for a CUP, subject to the proposed preconditions and conditions of approval set forth in Exhibit P.18 by PDS, which should be adopted.
3. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

4. The proposal complies with applicable requirements of Title 30 SCC.
5. The proposal will not be materially detrimental to uses or property in the immediate vicinity.
6. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.
7. Adequate public services exist to serve the proposal.
8. If approved with the recommended preconditions and conditions, the proposal will make adequate provisions for the public health, safety and general welfare and will not be detrimental to the immediate vicinity.
9. The Examiner concludes that the CUP should be approved.
10. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact is hereby adopted as such.

## **DECISION AND ORDER**

The **CONDITIONAL USE PERMIT** is **APPROVED SUBJECT TO** the following **PRECONDITIONS AND CONDITIONS**:

### **PRECONDITIONS:**

- A. Simultaneous to the recordation of a Land Use Binder for the CUP, a Critical Area Site Plan (CASP) shall be recorded with the Snohomish County Auditor that depicts the critical area and their buffers in a Critical Area Protection Area (CAPA) with the restrictive language as follows:

"All CRITICAL AREA PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, ground disturbing activity, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees."
- B. Ten-feet shall be deeded as right-of-way along the property's frontage on Menzel Lake Road.
- C. A Record of Developer's Chapter 30.66B SCC Mitigation Obligations shall have been recorded with the County Auditor.
- D. The Applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area B in the amount of \$50,764.00. Credit for certain expenditures may be allowed against said payments to the extent authorized by County Code.
- E. A Type B4 Permit for commercial hauling shall be obtained to the satisfaction of Snohomish County Department of Public Works.

**CONDITIONS:**

- A. Exhibit B.1 dated September 10, 2010, shall be the Official Site Plan; any discrepancy between the content of the Official Site Plan and the performance standards of Chapter 30 SCC shall be resolved in favor of the standards contained within Chapter 30 SCC. Revision of Official Site Plans is regulated by Chapter 30.42C.110 SCC.
- B. All operations shall comply with the applicable standards of SCC 30.31D.100-160, which were in effect on the date of complete application, November 18, 2008.
- C. Chapter 30.42C.200 requires execution and recording with the County Auditor of a Land Use Permit Binder (LUPB) in conjunction with the issuance of any CUP. A copy of the recorded document shall be provided to PDS.
- D. In the event that mining operations cease on the site for a period of 24 consecutive months, the CUP shall be determined to have expired. Implementation of the reclamation plan shall be required.
- E. A 50-foot mining setback shall be established as shown on the official site plan. This setback shall be maintained permanently as a view-obscuring planting screen. No logging or clearing shall occur in this area.
- F. All vehicular access shall be limited to one point on Menzel Lake Road, as shown on Exhibit B.1.
- G. The use of compression brakes shall be prohibited on the project site. A sign which reads "Use of Compression Brakes Prohibited" shall be posted adjacent to the project driveway near the entrance warning entering truck drivers of this prohibition.
- H. All processing equipment, support structures, and material stockpiles shall be located on the floor of the pit as generally shown on Exhibit B.1. Rock crushing operations shall not occur for more than two weeks in any given calendar year. There shall be no asphalt or concrete batch plants established or operated on the subject property. There shall be no blasting.
- I. Hours of operation shall be from 7:00 AM to 5:30 PM, Monday through Saturday, local time, excluding federal holidays. Sales only may be conducted on Saturdays. In case of a declared public emergency, excavation operations may occur on a continual basis as necessary to support emergency response operations; provided that, written notice of such extended operation shall be submitted to PDS for inclusion within the case file within 24 hours of the initiation of such operations. Any such notice shall state the reasons for the emergency operations.
- J. The permittee shall continue with the existing mitigation schedule of seven cents (\$.07) per cubic yard of material that is imported into the site and of five cents (\$.05) per ton of mined materials exported from the site, payable to the City of Granite Falls until December 31, 2011. Commencing on January 1, 2012, the permittee shall pay six cents (\$.06) per cubic yard of material that is imported into the site and of seven cents (\$.07) per ton of mined materials exported from the site, payable to the City of Granite Falls, pursuant to the terms and conditions of the Voluntary Mitigation Agreement (Exhibit P.13). A closed wash water system shall be utilized.

- L. Water shall be available on the site for dust control. Fugitive dust (particulate emissions) shall be controlled at all times in the excavation and other operational areas by utilizing direct watering methods.
- M. The Spill Plan (Exhibit C.9) shall be fully implemented. Adequate water quality BMPs and adequate containment facilities shall be fully maintained.
- N. A LDA permit(s) will be required for construction of the washwater ponds and for stockpiles not used for mine reclamation purposes.
- O. The Timber Management Plan (Exhibit C.11) shall be fully implemented.
- P. All recommendations contained within the Noise Study (Exhibit C.8) shall be fully implemented and maintained.
- Q. The operator shall remove all metal, lumber, or other refuse and solid waste from the site. Solid waste and recyclable materials shall be disposed of in accordance with the County's solid waste regulations and flow control ordinances.
- R. The site shall be posted with signs having letters at least three inches (3") high and 2 inches (2") wide, giving clear warning of the dangerous conditions resulting from the excavation. Said signs shall be no farther than 50 feet apart around the periphery of the subject property and shall be maintained in good repair until excavation and reclamation operations are completed.
- S. Prior to expansion of the footprint of the existing mining operations:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Conditions A and B, above.
  - ii. Rural frontage improvements shall be constructed along the parcel's frontage on Menzel Lake Road to the satisfaction of the County.
  - iii. Prior to any development activity (e.g. clearing, grading or filling) within a section to be mined:  
The Applicant shall mark with temporary markers in the field the boundary of all Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to the County.
  - iv. A permanent fence and CAPA signage shall be installed along the CAPA tract boundary in the mining section that is being disturbed, as outlined in the Revised December 15, 2009 Critical Area Study, Buffer Mitigation Plan, and Habitat Management Plan by Wetland Resources, Inc (Exhibit C.6).
  - v. The permittee shall limit gravel extraction on the site to ten feet (10') above the Seasonal High Ground Water Table (SHGWT). The SHGWT is illustrated on Figure 2 of the Ground Water Monitoring Plan (Exhibit C.4).
  - vi. The Ground Water Monitoring Plan dated May 20, 2010, prepared by Associated Earth Sciences, Inc. (Exhibit C.4), shall be fully implemented.

- vii. Monitoring wells MW-5 and MW-6 (Exhibit C.4) shall be constructed and results shall be included as a part of the monitoring reports for water quality prior to excavation in the expansion authorized by this proposal.
- T. In conformity with applicable standards and timing requirements:
- i. At the completion of mining the pit floor in Section 3, a full drainage plan shall be submitted to PDS for review and approval to confirm the required size of infiltration area not to be reclaimed.
  - ii. If an on-site water line extension is necessary, the Buffer Restoration Plan described in the Revised December 15, 2009 Critical Area Study, Buffer Mitigation Plan, and Habitat Management Plan by Wetland Resources, Inc. (Exhibit C.6) shall be satisfactorily implemented and mitigation performance bond posted. The bond shall be retained for a minimum period of five (5) years or thereafter until the performance standards are met.
  - iii. After completion of excavation operations, the operator shall dismantle and remove within three (3) months all equipment introduced on the site in support of the operations, with the exception of equipment necessary for reclamation, which equipment shall not be removed until such reclamation is completed to the satisfaction of the state or local authorities.
- U. This permit shall expire on August 29, 2061.

Nothing in this approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Decision issued this 29<sup>th</sup> day of August, 2011.



Millie M. Judge, Hearing Examiner

**EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

**Reconsideration**

Any party of record may request reconsideration by the Examiner **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington,

(Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before SEPTEMBER 8, 2011.** There is no fee for filing a petition for reconsideration. “The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the Applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The Applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record **within 14 days from the date of this decision.** Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing at the Public Assistance Counter of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA 98201) **on or before SEPTEMBER 12, 2011,** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written

arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

---

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by PDS. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

---

Staff Distribution:

Department of Planning and Development Services: Ed Caine

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.

**This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than AUGUST 29, 2012.**

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).

2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
  - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
  - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

---

---

**ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS**

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of \_\_\_\_\_, \_\_\_\_\_.

Certified by:

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Title)