

January 26, 2015

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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**REPORT AND RECOMMENDATION TO THE
METROPOLITAN KING COUNTY COUNCIL**

SUBJECT: Department of Permitting and Environmental Review file no. **L07TY402**
Proposed ordinance no. **2010-0461**

FRANKLIN RIDGE SAND AND GRAVEL
Rezone Application

Location: Two parcels totaling 129.5 acres located about two miles south of
the City of Black Diamond; parcels 302107-9025 and -9042

Applicant: Green Section 30
represented by **David Morris**
2319 Hobart Avenue SW
Seattle, WA 98116
Telephone: (206) 720-1899
Email: djmorris@aol.com

King County: Department of Permitting and Environmental Review
represented by **Fereshteh Dehkordi**
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SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:

Department's Final Recommendation:

Examiner's Recommendation:

Approve, with conditions

Approve, with one amended condition

Approve, with additional conditions

EXAMINER PROCEEDINGS:

Hearing Opened: January 15, 2015
Hearing Closed: January 15, 2015

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

FINDINGS AND CONCLUSIONS:

1. General Information:

Request: Reclassify approximately 130 acres from RA-10 (Rural Area, one dwelling unit per acres) to M (Mineral) zone, allowing continuation and expansion of sand and gravel extraction and material processing of an estimated 5,000,000 cubic yards of sand and gravel over the course of approximately twenty years. Clean fill will be imported to the site for reclamation per an approved monitoring program.

Location: Two parcels (302107-9025 and -9042) totaling 129.5 acres located about two miles south of the City of Black Diamond.

Section/Township/Range: S30-T21N-R7E

Proponent: Green Section (GS) 30, LLC
Attn: David Morris
2319 Hobart Avenue SW
Seattle, WA 98116
Email: djmorris@aol.com

File Number: L07TY402

Threshold Determination: Mitigated Determination of Nonsignificance (MDNS), issued September 23, 2014

County Contact: Fereshteh Dehkordi, PPM III
(206) 477-375
fereshteh.dehkordi@kingcounty.gov

2. History/Background:

A. The property has been used as a sand and gravel extraction site since the early 1960s. The mining operation started on the smaller parcel (tax lot 302107-9042) and later expanded into the adjoining parcel (tax lot 302107-9025) under the 2003 Wheeler Gravel Pit Expansion. The Department of Permitting and Environmental Review (DPER)¹ approved a total of twenty-six acres of extraction within the two parcels under grading permit L03RE015, continuing the mining operation as a

¹ For the pre-2013 events described here, DPER was known as DDES (the Department of Development and Environmental Services). For consistency sake, we will refer to "DPER" throughout.

legal nonconforming use in an RA zone. As part of that grading permit review, DPER published a Mitigated Determination of Nonsignificance (MDNS) on December 3, 2003, requiring any future expansion to be evaluated through a rezone application.

- B. On June 12, 2007, Interwest Development NW, Inc. (Interwest) applied to DPER to rezone the property (file no. L07TY402) to further expand mining operation and allow material processing on the combined site. The Rezone Notice of Application was posted on the subject property on July 30, 2007, and published in the Seattle Times on August 1, 2007. The public notice describing the proposed Rezone was mailed to property owners within a 500-foot radius of the subject property on August 2, 2007.
 - C. DPER staff conducted an on-site examination of the subject property, reviewed the expanded environmental checklist, and analyzed the proposed action in light of King County plans, policies, and other official documents regulating this property.
 - D. Pursuant to the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, DPER issued an MDNS on August 12, 2010, concluding that the proposal would not cause probable significant adverse impacts on the environment, but only if impacts to Enumclaw-Franklin Road SE were mitigated. DPER did not require an Environmental Impact Statement (EIS), but did require reconstruction of Enumclaw-Franklin Road SE.
 - E. Due to the downturn in the local construction market, and per Interwest's request, DPER placed the rezone application "on hold."
 - F. On November 2013, DPER received a change in applicant status from Green Section 30, LLC (GS30), the new owner and applicant. At GS30's request, DPER and the King County Department of Transportation (KCDOT) re-evaluated the need for road reconstruction.
 - G. On September 23, 2014, King County DPER, as the lead agency, re-issued the MDNS for the rezone request, and sent notice of the MDNS to the surrounding property owners, parties of record, public agencies, and tribes. The key difference between the 2010 and 2014 MDNSs was a reduction in the required road-related mitigation. The re-issued MDNS was not appealed.
 - H. During the course of the process, DPER received three letters from a neighbor, Stephen Clark. Mr. Clark expressed concerns about increased noise level, flooding, deterioration of access road due to truck hauling, and impacts to aquifers and Fish Lake. In addition, the City of Black Diamond commented twice, concerned about potential risks of ground water contamination due to equipment-related fuel spills, hydraulic oil leaks, and grease.
3. Site and Surrounding Characteristics:

- A. Topography: The smaller parcel (302107-9042) has been mined in the past and has an altered topography. Sand and gravel extraction has been extended onto the larger parcel in the past. Currently, the land forms a ridge crossing the entire site from north to south. The property slopes down steeply (over 40%) from the center of the site to the west and to the edge of an excavated depression where a palustrine open water wetland has formed. The land slopes down moderately from the ridge to the east where the proposed mining expansion will occur. The area proposed for gravel extraction is mainly rolling hills with slopes of approximately 10%. No extraction will occur within the steep slope hazards area.
- B. Soils: The 1973 Resources Conservation Service (RCS) describes the general soils in the area as gravelly sandy loams and silty loams consisting of EvC, 5-15% slopes – Everett gravelly sandy loam, and EvD, 15-30% slopes – Everett gravelly sandy loam.
- C. Critical Areas (Wetlands): Two wetland areas (Area A and B) are located in the north and west portions of the site and outside of the area proposed for mining expansion. Wetland A is a palustrine, open water wetland resulting from historic silica mining, and covering approximately 3.5 acres. Wetland B is approximately .5 acres and located in the extreme northern portion of the property. The wetland areas and their buffers (approximately 4 acres) are regulated by the County's Critical Areas Ordinance, KCC Chapter 21A.24.
- D. Critical Areas (Coal Mine Hazards Areas): The site contains coal mine hazard areas. The proposed rezone and expansion of mining activities will be above the gem coal seam. Excavation and subsequent filling are allowed in all coal mine hazard areas, provided any site specific hazards are addressed.
- E. Vegetation: The property is mostly covered by mature mixed trees and underbrush, although the previous applicant undertook some clear-cutting. Forest clearing will occur as part of the mining expansion. A State Forest Practices permit may be required for such clearing.
- F. Wildlife: The large intact size of the property, presence of mature vegetation, and a large wetland complex, could support a mixed population of birds, large and small mammals, and reptiles on the site. No species of mammals, birds, reptiles, and amphibians listed as threatened or endangered by federal, state, or local agencies are known to inhabit the property. The concentration of wildlife will remain within the critical areas of the site, which cannot be altered.
- G. Neighborhood Characteristics: Almost all the abutting properties are large undeveloped parcels owned by Palmer Coking and Coal and zoned either RA-5 (Rural Area, with a density of one dwelling per five acres) or owned by Washington State and zoned RA-10 (Rural Area, with a density of one dwelling per ten acres). The exception is a sliver of land to the west and across Enumclaw Franklin Road SE that would, viewing the abutting areas as a clock, occupy approximately 9-10 on the clock face. DPER reports that this area, subject of a 2003 short plat, has recently (2012) received its final plat approval. The City of Black Diamond owns undeveloped land less than 500 feet north of the site, but

the City itself (and the urban growth boundary) is more than two miles northwest of the site. There are developed residential lots two-plus miles south and east of the site.

- H. Transportation: The site has direct access to Enumclaw-Franklin Road SE, a Rural Collector Arterial. This road, from the site entrance to its intersection with SR-169 (the Enumclaw-Black Diamond Road SE) less than two miles southwest, has been severely degraded, and is in need of immediate repair.
- I. Public Services: The proposal will not extend any public services such as public water and sewer into the rural areas. No impact to other services such as schools or police is anticipated. The need for emergency services such as fire will remain at the same level as the past operation. Mining operations and material processing will generate truck traffic and subsequent impacts to existing roads.

4. Analysis:

- A. DPER determined that, for a variety of reasons, a rezone is appropriate: At a combined 129.5 acres, the site can accommodate the operational impacts of on-site mining and processing. Surrounding parcels are mostly large, undeveloped parcels owned by major resource land development companies with potential for mining. There is an approved mining permit (under KC file L98G0056) granted to the parcels directly south of the site (Tax lots 302107-9023, -9056, and -9057). The rezone proposal has been reviewed under SEPA and the subject of two relatively recent, unappealed determinations that, so long as the applicant undertakes significant road improvements, the project poses no probable, significant, adverse environmental impacts.
- B. We begin our analysis with KCC 21A.44.060, which states that zone reclassifications are appropriate only where an applicant demonstrates compliance with the approval criteria in KCC 20.24.180 and .190. KCC 20.24.180 sets the general standard for examiner findings, including that a recommendation “will not be unreasonably incompatible with or detrimental to affected properties and the general public,” while KCC 20.24.190 sets specific examiner standards for rezone reclassifications, including a rezone being appropriate only where we include findings that “at least one of the following circumstances applies:”
 - A. *The proposed rezone ...is consistent with the King County Comprehensive Plan;*
 - B. *The property is potentially zoned for the reclassification being requested, conditions have been met that indicate the reclassification is appropriate and the proposed rezone ...is consistent with the King County Comprehensive Plan;*
 - C. *An adopted subarea plan or area zoning specifies that the property shall be subsequently considered through an individual reclassification application and the proposed*

rezone ...is consistent with the King County Comprehensive Plan; or

- D. The requested reclassification... is in the public interest and the proposed rezone...is consistent with the King County Comprehensive Plan.*

KCC 20.24.190 has an interesting construction. Provided we make findings on (A) consistency with the Comprehensive Plan (Comp Plan), that is sufficient, without reaching (B), (C) or (D), because the standard is whether “at least one of the [four subsections] applies.” Yet in the interests of thoroughness, we tackle more. We discuss consistency with the Comp Plan, potential detrimental impacts on other properties, and general appropriateness of a rezone, below.² For purposes of this paragraph we note that this site has been (B) designated as a potential mineral resource site in the Comp Plan.

- C. The most applicable Comp Plan policy – R-557 from the 2004 version (the version in place at the time of the 2007 application), since renumbered to R-681 in the 2014 – states:

King County may designate additional sites on the Comprehensive Plan Land Use Map as Mining only following a site specific rezone to Mineral zoning. Upon approval of a rezone to Mineral zoning, the Comprehensive Plan Land Use Map shall be amended to designate the site as mining during the next comprehensive plan amendment cycle. King County should approve applications for site –specific rezones to Mineral zoning and applications for permits that would authorize mineral extraction and processing only following site specific environmental study, early and continuous public notice and comment opportunities, when:

- a. The proposed site contains rock, sand, gravel, coal, oil, gas or other mineral resources;*
- b. The proposed site is large enough to confine or mitigate all operational impacts;*
- c. The proposal will allow operation with limited conflict with adjacent land use when mitigation measures are applied;*
- d. The proposal has been evaluated under the State Environmental Policy Act so that the county may approve, condition or deny applications consistent with the county’s*

² The requirement to demonstrate how a recommendation will not be detrimental to “the general public” (KCC 20.24.180) and that a requested reclassification be “in the public interest” (KCC 20.24.190(D)) is curbed by our Court’s counsel against basing decisions on factors such as “public use and interest” and the “public health, safety, and general welfare,” especially in the face of adopted standards and specifications. *Norco Const., Inc. v. King County*, 97 Wn.2d 680, 688-90, 649 P.2d 103 (1982).

substantive SEPA authority, and in order to mitigate significant adverse environmental impacts;

- e. Roads or rail facilities serving or proposed to serve the site can safely and adequately handle transport of products and are in close proximity to the site.*
- D. Evidence of the site's (a) mineral resources and the proposal's (d) evaluation and conditioning under SEPA are undisputed. The remaining items – whether (b) the site is large enough to confine or mitigate all operational impacts (here, groundwater and noise impacts), (c) will create only limited conflicts with adjacent land uses when mitigating measures are applied (here, noise), and (e) and the roads will safely and adequately handle product transport – warrant more detailed review. Our main concern reading through the extensive file, and the focus of our questions at hearing, involved the road, groundwater, and noise.³
- E. The 1.9 miles of Enumclaw-Franklin Road SE between the site entrance and SR-169 is seriously degraded, has begun to fail, and is in need of repair before re-starting mining operations. Part of the problem may be with the initial road. Interwest's transportation engineer concluded that the County improved the road in 1967 by laying crushed rock over roughly graded natural soil, without excavating or laying ballast, and he described how more recent repairs to the road surface have been insufficient, given a subpar base. However, according to DPER's expert, Fred White, the road was decent until Interwest ramped up hauling operations in the mid-2000s, when the road deteriorated under the weight of heavy, mine-related trucks.
- F. As discussed above, the 2010 Mitigated Determination of Nonsignificance (MDNS) required Interwest to reconstruct the full 1.9 mile stretch. In May 2014, the new applicant, GS30, wrote DPER explaining that it could not – given market conditions and the scope of its planned production volumes – afford a total reconstruction at the present, proposing instead to repair five segments of approximately 2400 feet that “require early attention.” DPER, KCDOT, and GS30 eventually arrived at an arrangement, formalized in the 2014 MDNS and appearing below as Condition 7, to replace the 2010 MDNS requirement (reconstruction of the entire stretch) with a more involved package.
- G. Under the arrangement GS30 worked out, prior to beginning hauling operations, GS30 must repair approximately 3500 feet of substandard segments,⁴ although KCDOT retains the option to require GS30 to reconstruct the road base for certain of these segments. Moving into active operations, GS30 must provide a fund for on-going County road maintenance, and repair those stretches KCDOT identifies in its bi-annual inspection. And prior to renewing the grading permit (which is

³ These are also the items most applicable to our inquiry under KCC 20.24.180 and .190: whether the proposal would be unreasonably incompatible with or detrimental to affected properties of and the general appropriateness of a rezoned.

⁴ The 2014 MDNS erroneously listed approximately 950 feet in need of repair. DPER explained at hearing (with the GS30's concurrence) that the correct number was 3500. Condition 7 reflects the corrected amount.

subject to periodic review), GS30 must make additional repairs and reconstruction the County determines necessary.

- H. The second major concern involves impacts to groundwater. The pit floor will be sloped to infiltrate stormwater runoff within the pit floor, and runoff does not appear to be an issue. But groundwater is. As noted above, the City of Black Diamond commented twice, concerned about potential risks of groundwater contamination from equipment-related fuel spills, hydraulic oil leaks, and grease. A neighbor, Stephen Clark, wrote that Intrawest had hit a winter aquifer in 2011 and created on-site flooding, and expressed concern that expanded pit operations would create flooding around Fish Lake and harm the aquifer. And the one member of the public to testify at the hearing, Wade Higgins, expressed both water quantity and quality concerns, discussing the “dramatic” rise of the local water table in winter and the 2011 incident, freshwater springs, the proximity to the Green River Gorge, and potential contamination.
- I. DPER required the previous applicant to perform several groundwater-related analyses. DPER’s Fred White concurred that Intrawest had hit water in approximately 2011. He said that, according to the state Department of Natural Resources, that strike was not to the general water table but to a perched water table, yet he agreed that future operations might hit the water table. He observed that high winter water tables coincide with a less active period of a mining operations’ cycle, and if operations encounter a water table, an operator can address it by backing off, backfilling the area with clean fill, and raising the floor elevation. Bill Wheeler, who mined the site previously, stated that that is how they actually fixed the 2011 groundwater encounter, and that he had proactively approached the City to work on water-related issues.
- I. Our final major area of inquiry involves noise. Testimony established that the site was over two miles from established residences. Yet as noted above, Mr. Clark (who apparently lives in one of those areas to the south and east) wrote twice regarding noise from Intrawest’s then operations. And the mine will expand east. Moreover, as discussed above, while the abutting properties at the time of the 2007 were all large landholdings, in the interim two short plats to the west, directly across the Enumclaw-Franklin Road SE, were finalized; any residential development on those lots will be much closer.⁵
- J. Noise impacts are two-fold. If the site is rezoned from Rural Area to Mining, the decibels the site’s operations can legally create will rise, and as mining extends east and north, distances and dampening vegetation will decrease.

CONCLUSIONS:

1. A rezone to mining is far from the last word on mining. KCC 21A.22.010 sets out detailed standards that minimize the impacts of mineral extraction and materials processing operations upon surrounding properties. Prior to commencing any extractive or materials processing operations, KCC 21A.22.030 requires a grading permit, which

⁵ While the Examiner’s Office decides all preliminary plats applications in unincorporated King County, it only becomes involved with a preliminary *short* plat if an appeal is filed. No appeals were filed for those short plats.

must comply with all applicable county codes. The grading permit process is designed to minimize adverse stormwater impacts; protect water quality; minimize habitat loss; protect sensitive areas; facilitate long term forest practice; minimize adverse impacts from materials processing, quarrying and mining operations; and prevent harm to property and persons. KCC 16.82.010. Best Management Practices are required for site operation during mining and material processing. See Condition 10. And annual, as well as periodic, every-five-years, review is built into the mineral extraction process, with the ability to revise permit conditions to “mitigate identifiable environmental impacts.” KCC 21A.22.050.

2. Yet a rezone is a major step. Later review processes are “not intended to re-examine the appropriateness of the mineral resource use.” Comp Plan policy R-688. A rezone will set the table for the foreseeable future.
3. As to the Enumclaw-Franklin Road SE, whether GS30-funded repairs will be sufficient to fix an already degraded road or whether later repairs for future, GS30-created road damage will, given the apparently subpar condition of the road base, be sufficient, is unclear. But, the terms the County memorialized as Condition 7 places the bulk of that risk on GS30 (*i.e.*, it may be required to undertake reconstruction). Given the deference we accord DPER’s and KCDOT’s technical expertise, Condition 7 is sufficient.
4. For groundwater, Interwest completed several studies looking at groundwater, Mr. White submitted written comments on the history of groundwater review for the site and surrounding area, and there will be detailed review during the grading permit stage. (Condition 6, below, discusses the groundwater related report to be prepared as part of the grading permit analysis, while Condition 10 requires Best Management Practices.) And the City expressed satisfaction with the way its groundwater concerns were (and would) be handled. In the final analysis, groundwater is an issue in the area and will likely be front and center for DPER, but for purposes of the rezone stage, additional mining on this property is not incompatible.
5. Prior to commencing mining, DPER can require, and an operator can undertake, measures to lessen noise impacts. DPER can monitor noise. And we can enhance Condition 9 to beef up DPER’s noise-related options. But there is no question the area will get louder with expanded mining. There is a significant buffer to established residences to the east, although that will decrease as mining expands east. Properties short-platted across the Enumclaw-Franklin Road SE are significantly closer. The flooded silica pit (Wetland A) provides a buffer for the southern portion of these new lots; if the eastern buffer along the edge of this area is extended north to its intersection with the Enumclaw-Franklin Road SE, that will preserve some vegetation screening and distance between mining operations and those recently short-platted properties.⁶ We add this as Condition 11. And if, as intended, operators reforest a previously clear-cut area ahead of the mining, and then use the organic topsoil stripped from the newer mining segments (in addition to importing backfill) to reforest mined-out areas as mining advances (as requirement we make explicit as Condition 12), reforestation will help.

⁶ GS30s current intention for mine expansion appears to be in the eastern portion of the property, retaining a significant buffer to those properties. Our Condition 11 buffer is intended to create a floor, not a ceiling.

6. In sum, the subject property is not an ideal, completely conflict-free spot for mining. But that is not the standard an applicant must show. The question is whether it the rezone would be “*unreasonably* incompatible with or detrimental to” impacted properties, KCC 20.24.180, and whether, once mitigation measures are applied, the conflict with adjacent land uses will be “limited.” Comp Plan R-681. The County’s first Resource Conservation Strategy is that the County “shall promote and support forestry, agriculture, mining and other resource-based industries as a part of a diverse, regional and sustainable economy.” Comp Plan R-604. As DPER observes, mining and processing mineral resources are important parts of the County’s economy; the site has been used for mining in the past and is suitable for continuous extraction and processing of sand and gravel; and the site can provide for construction materials to be used locally and regionally, thus contributing to the economy
7. In the end, we concur with DPER’s recommendation that the application and supporting documentation provide a sufficient level of information to ensure that the proposed reclassification will be compatible with the surrounding environment and meets the goals and policies of the King County Comprehensive Plan, and that further, it can comply with the King County regulations and standards.

RECOMMENDATION:

APPROVE the proposed rezone request (KC File L07TY402), subject to the following conditions:

1. Mining and processing activities shall conform to the provision of KCC 21A.22 with regards to mining and processing materials on-site.
2. A Forest Practices Permit may be required. This shall be determined at the grading permit phase.
3. Prior to any work, a King County grading permit shall be obtained. The grading permit application shall comply with the applicable provisions of the King County Surface Water Design Manual, the King County Road Design and Construction Manual, the King County Critical Areas Standards, and the Clearing and Grading standards.
4. The site contains a coal mine hazard area. A report must be prepared and submitted with the grading permit to establish the current depth, the depth when excavation has been completed, and the final cover depth when backfill is completed. The report must identify any potential collapse that could be a safety hazard to equipment, operators or any mine occupants. The report must also address potential impacts associated with infiltration of stormwater over the abandoned workings. This includes potential for contaminants or excessive turbidity entering the regional aquifer or the Green River through the abandoned coal mines, and for infiltration to increase the risk of mine collapse or hazardous ground settlement.
5. The Washington State Department of Fish and Wildlife shall be consulted for current listing of designated endangered, threatened and sensitive species. A wildlife habitat report shall be prepared and submitted with the grading permit.

6. A report providing information about groundwater for the project site shall be prepared with the grading permit. The report must reference the previous geophysical study and any other available groundwater information for estimating the seasonal high groundwater throughout the site and immediate surroundings. The report must also discuss uncertainty in the groundwater model and describe in detail how the project will insure that a minimum of three feet of vertical separation will be maintained between the mine floor and the seasonal high water table. The report must identify appropriate mitigation if excavation encounters groundwater.
7. The following conditions from SEPA must be satisfied prior to any mining operation and processing on the site:
 - A. Approximately 3,500 feet of substandard road segments on the Franklin-Enumclaw Road SE between Enumclaw-Black Diamond Road SE and the entrance to the property shall be identified by King County and repaired prior to beginning hauling operations. The road segments identified for repair shall be covered by a minimum three-inch HMA overlay. If road base reconstruction is identified by KCDOT's Road Maintenance Section, that portion of the road shall be reconstructed. An appropriate level of drainage review in accordance with King County's Surface Water Design Manual will be assessed and shall be complied with.
 - B. GS30 shall provide a maintenance fund to the County's satisfaction, to be used for on-going County maintenance of the Franklin-Enumclaw Road SE during the term of the permitted operations.
 - C. The Road Maintenance Section will inspect the Franklin-Enumclaw Road SE twice annually (October and February) during the term of the permitted operations, and GS30 shall perform additional repairs as directed by the County.
 - D. GS30 shall provide to the County a record of operation consisting of truck volumes during the first three months of operation to determine if the repair was satisfactory. Other areas for repair if needed may be identified. Continued record keeping of operations may be required after the first three months of operation.
 - E. Additional road repair and reconstruction as determined by the County may be required prior to renewal of the grading permit during the standard periodic review.
8. A right-of-way use permit, if required, shall be obtained for all repair and improvements within the public right of way.
9. As part of the grading permit, a noise monitoring study shall be conducted to evaluate noise generated on site. Measures to reduce excess noise shall be developed and implemented, if necessary to comply with the King County Noise Ordinance. DPER explicitly retains the option to limit the footprint of allowed operations in order to reduce noise-related conflicts with nearby residents.

10. The mining and processing operation shall develop a Best Management Practice (BMP) plan for the site's operation and maintenance. This should include a contingency plan for any potential leaks and spills. Efforts shall be made to localize potential risks of any leak or spill in one area with prevention measures to avoid impacts to ground water. The BMP shall be made available to the City of Black Diamond for comments during the grading permit review process. The BMP shall be updated during the required periodic review.
11. The buffer along the eastern edge of the flooded silica pit shall be extended north to its intersection with the Enumclaw-Franklin Road SE, to preserve vegetation screening and distance between mining operations and the privately held, short-platted properties on the west side of the Enumclaw-Franklin Road SE.
12. Prior to commencing operations, reforest the previously clear-cut areas ahead of the mining, and then promptly reforest mined-out areas.

ORDERED January 26, 2015.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL AND OPTION FOR MOTION TO RECONSIDER

This examiner recommendation may be appealed to the King County Council, as described in the below paragraphs. However, as an alternative, you may file a motion for reconsideration with the Office of the Hearing Examiner on or before **February 9, 2015**, specifying the basis for the appeal and arguments in support. Email to hearingexaminer@kingcounty.gov is sufficient, as is mail or delivery to 400 Yesler Way, Suite 240, Seattle, Washington 98104. There is no filing fee, but the examiner must *receive* the motion by February 5. Such a timely-filed motion shall stay the deadlines for an appeal to Council. After weighing the motion for reconsideration, the examiner will issue a written determination; that document will reset the deadlines for filing an appeal to the Council.

In order to appeal the decision of the hearing examiner to the Council, a written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250 (check payable to King County Office of Finance) on or before **February 9, 2015**. If a notice of appeal is filed, the original and two copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before **February 17, 2015**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104, prior to the close of business (4:30) p.m. on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 calendar days of the latter of the date of this report or the date of an examiner's determination on a motion for reconsideration, or if a written appeal statement and argument are not filed within 21 calendar days of the latter of the date of this report or the date of an examiner's determination on a motion for reconsideration, the Clerk of the Council shall place a proposed ordinance that implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting the Council may adopt the examiner's recommendation, defer action, refer the matter to a Council committee, or remand to the examiner for further hearing or further consideration.

The action of the Council approving or adopting a recommendation of the examiner shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act (LUPA) is commenced by filing a land use petition in the Superior Court and serving all necessary parties within 21 days of the date on which the Council passes an ordinance acting on this matter. (LUPA defines the date on which a land use decision is issued by the Council as the day the Council passes the decision ordinance.)

MINUTES OF THE JANUARY 15, 2015, HEARING ON DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. L07TY402, PROPOSED ORDINANCE NO. 2010-0461.

David Spohr was the Hearing Examiner in this matter. Fereshteh Dehkordi, Fred White and Molly Johnson participated in the hearing on behalf of the Department; David Morris, Robert Morris, and Bill Wheeler for the Applicant, and Wade Higgins.

The following exhibits were offered and entered into the hearing record:

- | | |
|----------------|--|
| Exhibit no. 1 | DPER file no. L07TY402 |
| Exhibit no. 2 | Preliminary department report, transmitted to the Examiner on January 15, 2015 |
| Exhibit no. 3 | Notice of Application dated June 12, 2007 |
| Exhibit no. 4 | Certificate of Applicant Status dated November 12, 2013 |
| Exhibit no. 5 | Environmental Checklist dated June 12, 2007 |
| Exhibit no. 6 | Revised Environmental Checklist dated November 18, 2013 |
| Exhibit no. 7 | Mitigated Declaration of Non-Significance dated August 12, 2010 |
| Exhibit no. 8 | Notice of Withdraw and Reissuance of Mitigated Determination of Non-Significance dated September 23, 2014 |
| Exhibit no. 9 | Site plan dated December 22, 2014 |
| Exhibit no. 10 | Environmental Noise Analysis prepared by SSA Acoustics, LLP dated April 7, 2009 |
| Exhibit no. 11 | Rezone Application prepared by Interwest Development NW, Inc. received June 12, 2007 |
| Exhibit no. 12 | Traffic Impact Analysis by Transportation Consulting Northwest Dated April 23, 2007 |
| Exhibit no. 13 | Critical Area Study by Ecological Land Services Inc. dated June 22, 2006 |
| Exhibit no. 14 | Email from Fred White to Fereshteh Dehkordi dated December 30, 2014, regarding groundwater |
| Exhibit no. 15 | Notice of Re-Issuance of Withdrawal and Reissuance of SEPA Threshold Determination, with attached mailing list, September 23, 2014 |

DWS/gao

January 26, 2015

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review file no. **L07TY402**
Proposed ordinance no. **2010-0461**

FRANKLIN RIDGE SAND AND GRAVEL
Rezone Application

I, Ginger Ohrmundt, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties of record/interested persons and primary parties with e-mail addresses on record.
- caused to be placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties of record/interested persons at the addresses indicated on the list attached to the original Certificate of Service.

DATED January 26, 2015.



Ginger A. Ohrmundt
Legislative Secretary II