

Notice to Parties of Record

Project Name: Washougal Pit

Case Number: SLR-2020-00009

The attached decision of the Land Use Hearing Examiner is final unless a motion for reconsideration is filed or an appeal is filed with Superior Court.

See the *Appeals* handout <https://clark.wa.gov/media/document/57535> and <https://clark.wa.gov/community-development/land-use-forms-and-fees> for more information and fees.

Motion for Reconsideration:

Any party of record to the proceeding before the hearings examiner may file with the responsible official a motion for reconsideration of an examiner's decision within fourteen (14) calendar days of written notice of the decision. A **party of record** includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The motion must be accompanied by the applicable fee and identify the specific authority within the Clark County Code or other applicable laws, and/or specific evidence, in support of reconsideration. A motion may be granted for any one of the following causes that materially affects the rights of the moving party:

- a. Procedural irregularity or error, clarification, or scrivener's error, for which no fee will be charged;
- b. Newly discovered evidence, which the moving party could not with reasonable diligence have timely discovered and produced for consideration by the examiners;
- c. The decision is not supported by substantial evidence in the record; or,
- d. The decision is contrary to law.

Any party of record may file a written response to the motion if filed within fourteen (14) calendar days of filing a motion for reconsideration.

The examiner will issue a decision on the motion for reconsideration within twenty-eight (28) calendar days of filing the motion for reconsideration.

Mailed on: July 31, 2023

DS1333

Revised 7/15/13



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**BEFORE THE LAND USE HEARINGS EXAMINER
OF CLARK COUNTY, WASHINGTON**

Regarding an application by James D. Howsley for)	FINAL ORDER
permits necessary to allow mining and processing)	AS REVISED ON
of gravel, including rock crushing, and transport)	<u>RECONSIDERATION</u> ¹
of aggregate material at 6303 SE 356 th Avenue)	SLR-2020-00009
in unincorporated Clark County, Washington)	(Washougal Pit)

A. SUMMARY

1. The applicant, James D. Howsley, requests site plan, conditional use, and gorge permit approval for surface mining and material processing, including rock crushing, and transportation of aggregate material, on a roughly 122-acre tract consisting of six separate tax parcels, 133044000, 134202000, 134219000, 134201000, 134200000, and 986031308, one of which is addressed as 6303 SE 356th Avenue (the “site”).²³ The Applicant also requests after-the-fact review and scenic area approval for prior unpermitted mining activities and installation of underground powerline conduit along SE 356th Avenue as well as proposed completion of electrical power installation and an eight-inch water line running north along SE 356th Avenue. (Exhibit 1, Attachment 8).

2. Parcels 1330444000 and 134202000 and abutting properties to the east and southeast are zoned GLSA-40 (Gorge Large-Scale Agriculture-40). Parcels 134219000, 134201000, 134200000, and 986031308 and abutting properties to the southeast are zoned GR-5 (Gorge Residential 5). Abutting properties to the north and south are zoned GSW 20 (Gorge Small Woodland 20). The entire site and all abutting parcels are also subject to the Columbia River Gorge Scenic Area overlay zone. Parcel 133044000 is also subject to the Surface Mining Overlay District. (Exhibit 1, Attachment 5).

a. The applicant proposed to limit gravel extraction and processing activities to a roughly 74-acre portion of Parcels 133044000 and 134202000. The remainder of the site will contain stormwater facilities, buffers, and a private haul road, SE 356th Avenue, which connects the site to SE Evergreen Highway as well as providing access to abutting residential parcels.

b. The depth of mining will extend roughly 80 feet below ground surface (BGS) with a base floor elevation of 250 feet above mean sea level (MSL). Drainage is contained and infiltrated onsite with a stormwater system constructed in 1997. The applicant will modify the stormwater system as mining progresses and after the site is

¹ This Final Order as Revised on Reconsideration is intended to replace the original Final Order in this case issued on June 8, 2023 (Exhibit 426).

² The Development Application lists Mr. Howsley as the “applicant” (Exhibit 1, Attachment 2). The Staff Report lists Mr. Howsley’s firm, Jordan Ramis PC, as the “applicant.” However, Mr. Howsley is an attorney representing the property owner, ZP #5 LLC. He will not operate the mine. The examiner uses the term “the applicant” to refer to the property owner and/or operator of the mine.

³ The applicant amended the application to include Parcel 986031308 during the course of this review. Exhibit 345.

restored following completion of mining on the site. (Exhibit 420 at Figures 3 - 5).⁴ Once the gravel resource on the site has been exhausted, the applicant will reclaim the site for future use as allowed by the site's zoning. The excavated areas will be backfilled to elevations ranging from 250 to 400 feet above MSL, reclaiming the site to pre-mining topography. (Exhibit 120 at 3 and 420).

3. Properties abutting SE 356th Avenue are developed with residential uses. Lands owned by the U.S. Fish and Wildlife Service that are part of the Steigerwald Lake Wildlife Refuge abut the southern border of the site. Columbia River Gorge Elementary and Jemtegaard Middle Schools are located roughly 500 feet west of the haul road, abutting SE Evergreen Highway west of the site.

4. Gibbons Creek, a fish-bearing stream, flows from east to west near the northern border of the site. The stream and associated riparian lands are designated riparian habitat. The site also contains areas designated non- riparian habitat, including several Oregon White Oak trees and a snag on the site. There are larger stands of Oregon White Oak trees on abutting properties. The site also contains a 0.09-acre wetland in the southeastern corner of the site. (Exhibit 1, Attachments 5 and 20; Exhibits 134 and 365).

5. As described by the applicant, mining operations at the pit consists of the use of bulldozers, tractor scrapers, and front-end loaders to remove existing vegetation and soil overburden, use of the same equipment to collect exposed gravel deposits, and use of portable equipment to process the extracted gravel (crushing, screening, washing, blending and stockpiling of the mined material). No blasting or use of large stationary rock crushers is proposed. Overburden soil will be stored on the site during the post-mining reclamation process. (Howsley testimony and Exhibit 1, Attachment 8). Trucks will transport processed gravel from the pit to job sites throughout the region. Departing trucks will travel south on SE 356th Avenue, then east on SE Evergreen Highway to SE Evergreen Boulevard, then east on SR-14.⁵ Haul trucks will only travel westbound on SE Evergreen Highway when providing aggregate for construction sites in the City of Washougal. (Arguea testimony and Exhibit 1, Attachment 12).

a. Mining on the site began in 1972 as a source of aggregate for construction of SR-14. (Howsley testimony and Exhibit 1, Attachment 8; Exhibit 171). Mining activity ceased in 2005. (Exhibit 206 at 522/Fex. 27 at 31; Exhibit 424 at 2).⁶ No mining occurred on the site between 2005 and 2017. The Applicant's lessee "resumed" gravel extraction on the Property between 2017 and 2019. This mining activity was performed without required County permits and was therefore a violation. (*Id.*). As noted

⁴ Mr. Howsley testified that no changes to the stormwater facilities are proposed. However, Figures 3 - 5 of the applicant's reclamation plan indicate that future mining activities are planned where the existing stormwater facilities are located. In addition, the post-reclamation stormwater ponds shown in Figure 5 are substantially larger than the exiting ponds shown in Figure 3.

⁵ According to Google Maps, the road connecting SE Evergreen Highway and SR-14 is SE Evergreen Boulevard. At the hearing the parties referred to SE Evergreen Boulevard as "the spur road."

⁶ For ease of locating specific documents included in the packets of Exhibits submitted by Friends, the examiner cites to the County's exhibit number (206) and the relevant .pdf page of the County exhibit (522), then Friends' exhibit number (27) and the page number of Friends' exhibit or attachment (31).

above, the applicant is seeking after the fact approval of this prior unpermitted mining activity.

6. The County issued a Mitigated Determination of Nonsignificance ("MDNS") for the use pursuant to the State Environmental Policy Act ("SEPA") on February 24, 2021. (Exhibit 95). The applicant, Friends of the Columbia Gorge and nearby property owners Karen and Sean Streeter, Jody and Paul Akers, and Rachel and Zachary Grice (collectively "Friends") filed appeals of the County's SEPA determination. (Exhibits 103 and 105). The County issued a corrected notice of public hearing and preliminary SEPA determination on March 24, 2021. (Exhibit 120). The same parties filed appeals of the County's corrected SEPA determination. (Exhibits 127 and 130).

7. Clark County Hearing Examiner Joe Turner (the "examiner") conducted public hearings about the application and SEPA appeals. County staff recommended approval of the application subject to conditions of approval. See the Type III Development and Environmental Review Staff Report and Recommendation to the Hearing Examiner dated April 23, 2020 (the "Staff Report," Exhibit 120) and Exhibit 342. Representatives of the applicant and Friends and a number other persons testified orally and in writing both in support and in opposition to the proposed development and the SEPA appeals. Contested issues in the case include the following:

- a. Whether certain exhibits should be modified or stricken from the record;
- b. The date the application vested;
- c. Whether the application is complete. Specifically:
 - i. Whether the application included a required reclamation plan;
 - ii. Whether the application must include evidence of the topography of the site prior to the unpermitted mining that occurred on the site between 2017 and 2019;
 - iii. Whether the application must include drawings of existing and proposed stormwater facilities;
 - iv. Whether the application must address the existing drainage ditch on SE 356th Avenue;
 - v. Whether the application was signed by all owners of the site;
 - vi. Whether the application complies with CCC 40.240.050.A.4.f(2)(a)(ii), as it did not include "seeps/springs" on and near the site; and
 - vii. Whether the application includes a utility review required by CCC 40.240.050.A.4.1.

d. Whether the public received adequate notice of the application and hearings;

e. Whether applicable zoning allows mining on the site, which is located in the Columbia River Gorge Scenic Area;

f. Whether the SEPA appellants sustained their burden of proof that the lead agency's SEPA determination was in error; i.e., whether the lead agency adequately considered potential impacts from:

i. Noise;

ii. Dust;

iii. Traffic;

iv. Pavement damage;

v. Diesel pollution;

vi. The proximity of schools to the mine site;

vii. Stormwater;

viii. Fish and Wildlife habitat;

ix. Groundwater;

x. Scenic resources; and

xi. Whether the County enforcement division has the ability to ensure ongoing compliance with the conditions of approval.

8. Based on the findings provided or incorporated herein, the examiner:

a. DENIES SLR-2020-00009 and WHR-2022-00106 and REVERSES the MDNSs, as the application is incomplete; and

b. Solely in the event the above determination is overturned on appeal, GRANTS Friends' SEPA appeal and REMANDS the environmental threshold determination to the SEPA Responsible Official only for further study of impacts from noise, dust, mine trucks experience equipment failure and impacting trains south of the site, and enforcement of conditions of approval. Because the appeal is granted, the CUP application cannot be decided at this time.

B. HEARING AND RECORD

1. The examiner received testimony at four duly noticed public hearings about this application and the SEPA appeals on May 10, 11, and 27, 2021, and March 1, 2023. That testimony and evidence, including a recording of the public hearing and the case file maintained by the Department of Community Development (“DCD”), are included herein as exhibits. A list of the exhibits is attached to and incorporated into this final order. The exhibits are filed at DCD. The following is a summary by the examiner of selected testimony and evidence offered at the hearings.

May 10, 2021, hearing:

2. County planner Richard Daviau summarized the Staff Report (Exhibit 120) and his PowerPoint presentation (Exhibit 220). The area of the site where active mining is proposed is zoned GLSA 40 and subject to the Surface Mining Overlay zone. The access road is located on property zoned GR-5. The County issued a Mitigated Determination of Non-Significance (“MDNS”) for the project. The applicant and Friends both appealed the MDNS.

a. The majority of the project is setback 200 feet or more from abutting residential properties, as required by CCC 40.250.022.D.2.a. The stormwater ponds and haul roads are located within this setback and should be allowed. The stormwater facilities are not mining activities that will impact adjacent properties and the haul road is not a structure subject to setback requirements.

b. The applicant should be required to comply with the maximum noise limits set out in the Washington Administrative Code (the “WAC”). Exhibit 93 demonstrates that it is feasible to comply with the WAC noise limits if the applicant limits the number and speed of trucks operating on the haul road. This is required by the SEPA conditions. No blasting is proposed on the site.

c. He requested the examiner modify Condition H-5 to be consistent with the finding on page 7 of the Staff Report.

d. The site is subject to a reclamation plan approved by the Washington Department of Natural Resources (“DNR”). However, reclamation activities must also comply with the Gorge Scenic Area regulations. This is required by the conditions of approval.

e. Existing vegetation and berms on the site block views of the site from all Key Viewing Areas (“KVAs”). The applicant is required to retain this vegetation and berms to ensure the site remains visually subordinate when viewed from KVAs.

f. He took the photos included in his PowerPoint presentation in the summer/fall of 2020. No mining activities were occurring on the site at that time. He reviewed the potential environmental impacts of the mine operation based on the

conditions on the site prior to the mining activity occurring between 2017 and 2019, based on the Gorge Commission decision that this activity was not permitted.

g. He did not consider additional traffic from trucks hauling fill material to the site for purposes of reclamation. However, such trips would be subject to the 14 truck trips per hour limitation in the proposed conditions of approval. The County Code Enforcement section would be responsible for monitoring and enforcing compliance with the 14 truck trips per hour limitation. CCC 40.250.022.F(2) requires that the applicant develop and conduct a monitoring program to ensure compliance with conditions of approval. The applicant must submit monitoring results to the County on an annual basis. CCC 40.250.022.F(3). The County will conduct a periodic performance review of permit requirements and standards every three years. CCC 40.250.022.F(4).

h. SE 356th Avenue is a private road with a 10 mph speed limit sign. The MDNS allows vehicle speeds up to 15 mph, because the higher speeds reduce noise impacts by limiting the duration of noise in a particular location.

i. The County's SEPA determination was based on the applicant's noise study dated January 22, 2021. (Exhibit 93). The County's noise consultant, Ramboll, reviewed that noise study. (Exhibit 125). The County did not consider the applicant's May 6, 2021, noise study (Exhibit 138) in the MDNS.

j. The "area of existing disturbance" in SEPA condition 1.c depends on the outcome of pending appeals regarding the legality of recent mining activity. The Gorge Commission's recent decision determined that recent mining activity was illegal. Therefore, areas disturbed by that activity would be excluded from the "area of existing disturbance." But that decision is under appeal and the outcome of that appeal may change this determination.⁷

3. County development engineer Michelle Dawson addressed engineering issues.

a. The applicant is requesting a road modification to allow an alternative design for the turnaround at the end of the haul road, SE 356th Avenue.

b. Adequate sight distance is available at the intersection of SE 356th Avenue and SE Evergreen Highway. The "design vehicles" assumed in the County's sight distance standards are based on passenger vehicles, not heavy trucks. She did not consider the impacts of road grades or the slower acceleration/deceleration of large trucks in her sight distance analysis.

c. The applicant will retain all stormwater on the site, with the exception of an emergency overflow that will discharge to the existing ditch on SE 356th Avenue.

⁷ The Gorge Commission's decision (Exhibits 206 at 491/Fex. 27 and 206 at 533/Fex. 28) was affirmed by the Superior Court and the Court of Appeals while this application was being reviewed. (Exhibits 325 and 424).

d. There is a mapped geological hazard area on the site. However, it is located more than 100 feet from the proposed disturbance areas.

4. County wetland biologist Keith Radcliff requested the hearings officer modify condition A-15 to prohibit clearing “outside of existing clearing limits.”

5. David Jardin noted that he reviewed off-site traffic impacts while Ms. Dawson reviewed on-site traffic.

a. He testified that the limited vehicle queue storage on SE Evergreen Boulevard will not impact the Level Of Service (“LOS”) at the intersections of this road with SE Evergreen Highway and SR-14. These intersections are projected to operate at LOS B, well above the minimum acceptable LOS D required by the County. The applicant proposed to generate 170 truck trips per day, which includes 17 outbound truck trips during both the a.m. and p.m. peak hours. In addition, the SE Evergreen Boulevard/SR-14 intersection is controlled by WSDOT and that agency would have required mitigation if it believed it necessary. The same is true regarding the lack of a left-turn lane on eastbound SR-14. WSDOT would have required it if they believed it was warranted. The County could request that WSDOT allow a left turn lane if it is deemed necessary, but WSDOT has the final say. He did not analyze these issues, because they are within WSDOT’s jurisdiction and neither WSDOT nor the applicant’s traffic engineer raised any concerns about them.

b. The truck that crashed into the railroad was not included in the crash analysis, because it occurred outside of the five-year analysis period. That crash was caused by faulty equipment and/or an inattentive driver. This single incident does not indicate a crash trend that can be mitigated for and it is not possible to mitigate for inattentive drivers through engineering changes. Two heavy truck crashes were documented at or near the intersection of SE 356th Avenue and SE Evergreen Highway that were included in the crash history analysis.

c. The County cannot require or enforce speed limits on SE 356th Avenue because it is a private road.

6. Attorney Jamie Howsley, habitat biologist Francis Naglich, transportation engineer Diego Arguea, and acoustical engineer Iona Parks, appeared on behalf of the applicant.

a. Mr. Howsley summarized his pre-hearing brief, Exhibit 171. He noted that the applicant is seeking this approval “under protest,” as the property owner and operator believe they have the right to continue historic mining activities on the site. He noted that Judith Zimmerly transferred ownership of the site to a single member LLC, ZP #5 LLC. Nutter Corporation is the mine operator. Mr. Hornstein and Ms. Calvert represent Nutter Corporation.

i. He summarized the operation of the mine.

(A) He argued that a mine has existed on this site since 1972. Although the intensity of mining activity has fluctuated over time, between active mining activities and a dormant site, the property owner and/or operator have maintained all required state and federal permits and approvals, with the exception of County approvals. The applicant has the right to continue mining until all of the aggregate resources on the site have been exhausted, citing WAC 265-140-070(4)(D) and *University Place v. McGuire*. Both the County and DNR have consistently listed the site as “an active mine.” The County’s September 2014 surface mine map designates the site as an “existing mine.”

(B) There are two existing structures on the site, a wash station and a barn. The applicant recycles water from the stormwater ponds for use in the wash station. No new structures are proposed with this application. SE 356th Avenue is a private road owned by the applicant. All but one of the surrounding residences were constructed after the mine began operating.

(C) This facility is a gravel mine where existing gravel deposits are collected, not a quarry where solid rock is extracted and broken down. No blasting is proposed or required to extract aggregate from the site. This facility uses portable equipment that is much smaller than that used in a quarry operation.

(D) The Zimmerlys began mining on the site in 1972 pursuant to DNR permit No. 70-10745. The County did not regulate mining at that time. The 1986 Gorge Compact implemented the Gorge Scenic Area act. In 1993 DNR eliminated some state mining regulations and converted its permitting to reclamation only.

(E) The Gorge Commission approved an expansion of the mine with one condition requiring a berm and vegetation to screen views of the mine from Key Viewing Areas (“KVAs”) in the Gorge. The applicant installed and maintained the berm and vegetation and the site is not visible from any KVAs.

(F) Mining operations on the site are subject to comprehensive stormwater and erosion control requirements pursuant to the Washington Department of Ecology (“ECY”) general permit. Permitting to ensure compliance with the Clean Water Act was delegated to the states, RCW 90.48. DNR has statewide authority to regulate mining. The applicant must maintain SWCAA permits for its crushing equipment. Condition of approval H-1, which requires the applicant comply with all SWCAA prior to beginning operations, is moot, as the applicant has a current permit from SWCAA. The applicant’s DNR reclamation permit ensures that denuded areas will be reclaimed after mining has ceased. The applicant has maintained the same reclamation permit for the site since 1972.

(G) The County took over administration of the scenic area from the Gorge Commission in 1986. In March 2018 the County began an enforcement

action against the mine, arguing that the applicant did not have required County site plan and conditional use approvals and that the applicant was altering land in the Scenic Area without County approval. The applicant appealed that decision to the examiner, who ruled in favor of the applicant. (Exhibit). That decision was appealed to the Gorge Commission, which reversed the examiner's decision. (Exhibit). The applicant appealed the Gorge Commission's decision to the Superior Court where the case is pending.⁸

ii. The site contains high value mineral resources. It is the only existing gravel mine in the south half of the County. Absent this mine, the Yacolt Pit provides the nearest source of aggregate in the County, which requires a three-hour round trip to obtain aggregate for use on SR-14. There existing aggregate supply in the County is inadequate, which leads to higher building costs, housing costs, and taxes, as well as increased traffic and damage to area roads and more greenhouse gas emissions, because aggregate must be transported much longer distances. It is imperative to increase rock production in the County to alleviate the existing supply chain issue and support ongoing development in the County.

iii. The County must balance the potential environmental impacts of the mine against the need for aggregate. RCW 78.44.010 notes the importance of mineral extraction to the economic well-being of counties and notes that it is not possible to extract minerals without producing some environmental impacts. The Growth Management Act, RCW 36.70A, identifies aggregate sites as mineral resource lands that support industry. WAC 365-190 requires the County to identify, designate, and protect mineral resource lands and discourage incompatible uses in order to ensure the viability of resource industries. Resource lands are "protected not for the sake of the ecological role but to ensure the viability of the resource-based industries that depend on them." *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 478 (1998). WAC 365-190-070 requires the County to identify and classify mineral resource lands. WAC 365-190-070(3) notes that mineral resource lands will be depleted over time and then reclaimed for other uses. Mining may be considered a temporary use, depending on the volume of material available, and other uses may occur on a mine site after the materials have been depleted. The duration of mining activity is dependent on the market; the lifetime of the mine decreases as demand for aggregate increases. The County has identified this site as protected mineral lands. Therefore, it must adopt regulations to protect the mineral resource and ensure that development on adjacent lands does not interfere with continued mining operations, citing RCW 36.70A.060(1)(a). WAC 365-190-070(1) was amended in 2010 to require that counties analyze resource lands on regional basis and identifying the location of mineral resources. WAC 365-190-070(4)(a) makes distance to market a component of that analysis. Any conditions of approval must recognize and consider the need for aggregate in the region.

(A) RCW 36.70A.060(1)(b) requires the County to include a notice stating that incompatible mining activity, including blasting, crushing, transportation, etc., may occur whenever it approves development on lands within 500

⁸ As noted in footnote 6 above, the Superior Court and Court of Appeals affirmed the Gorge Commission's decision while this application was being reviewed.

feet of designated resource lands. The Grices and the Streeters submitted development applications after RCW 36.70A was adopted. Therefore, they should have received notice that the site was a mineral resource site that could generate conflicting impacts.

iv. Mining activities on this site will not result in significant adverse impacts to surrounding properties and uses.

(A) This site has had a stormwater permit since 1997. No changes to the existing stormwater facilities are proposed with this application.

(B) No blasting is proposed or required. The operator is merely excavating and processing existing subsurface gravel deposits.

(C) Truck traffic on SE 356th Avenue will not generate significant dust. The applicant will implement BMPs to control dust on the road and on the site, including applying water before and during soil moving activities. The Mine Safety and Health Administration (“MSHA”) regulates silica dust and requires testing to ensure compliance with applicable limits. The applicant will maintain an air discharge permit from the Southwest Clean Air Agency (“SWCAA”) for equipment operating in the pit.

(D) There is an existing eight-inch City of Washougal water line extending between SW Evergreen Highway and the site. However, public water is not required to serve the proposed use. There is an existing exempt groundwater well on the site. Condition H-6, which requires documentation from the water purveyor that all water connections have been installed and approved prior to beginning operations, should be deleted.⁹

(E) The applicant’s revised sound study demonstrates that truck traffic on SE 356th Avenue will not generate noise in excess of state standards. The applicant is willing to build a sound wall to further mitigate truck noise along this road as discussed in a prior sound study, but such a wall would likely conflict with scenic area regulations.

v. He raised the following issues regarding the Staff Report.

(A) He objected to the findings on pages 6 and 7 of the Staff Report and condition H-2 regarding periodic Code Enforcement inspections of the haul road and site. The applicant and operator have no issues with County inspections, but the County should be required to notify the applicant prior to any inspections to allow the applicant to ensure the safety of enforcement personnel. Condition H-2 should be modified to that effect. Condition H-5 conflicts with CCC 40.250.022.F, which provides

⁹ The applicant later modified the water supply plan for the site. No groundwater withdrawal is proposed. The applicant will utilize public water exclusively.

for monitoring and enforcement through annual and three-year review requirements. The Code requires a report from the applicant, not a Type I or Type II review.

(B) The applicant agrees with the County's Finding 6 regarding noise, with the exception of requiring additional Type III review of a jaw crusher. The jaw crusher generates less than 45 dB, based on measurements at other existing gravel pits. Table 5-1 of the applicant's sound analysis notes that sound from the jaw crusher is 2 dB less than the cone crusher. Conversations generate noise between 50 and 60 dB. Condition A-18 should be deleted.

(C) The applicant/operator may need to remove the perimeter berm on the site during the reclamation process in order to restore the natural topography of the site. He requested the examiner modify Finding 9 and conditions H-3 and S-1.d to that effect.

(D) Finding 14 should be modified as discussed in Exhibit 134. The protected oak trees are located south of the berm. The applicant proposed to remove the existing snag and mitigate for that removal.

(E) The "building envelopes" noted in Condition A-15 should be defined as the mining area shown in the reclamation permit.

(F) Finding 26 should be modified to delete any requirement to mitigate for pavement wear on the section of SE Evergreen Highway between the site and the City of Washougal city limits. This development will not generate truck traffic on SE Evergreen Highway west of the site, with the rare exception of construction projects in the City of Washougal. All other truck traffic will travel on the section of SE Evergreen Highway between the site and SR-14. The applicant will improve that section of SE Evergreen Highway by providing a pavement overlay with a 15-year lifespan.

(G) The applicant concurs with the conclusion of Findings 27 through 29, that it is feasible to comply with stormwater regulations on the site. However, the County misunderstands the regulations applicable to mining operations and the stormwater hydrology and existing stormwater facilities on the site. ECY already regulates stormwater through its Sand and Gravel permit and has determined that the site complies with its regulations. All stormwater runoff from a 100-year storm event will be treated and infiltrated on the site. Conditions C-1, C-2, and G-3 are redundant.

(H) No construction plans are required for this use. Therefore, condition A-3.a should be deleted.

(I) The erosion control plan required by Condition A-4 and the actions required by Conditions B-3 and B-4 merely duplicate the plan required by ECY's Sand and Gravel permit.

(J) The applicant has submitted and the County reviewed a geohazard permit. There is no need to resubmit the same report. Condition A-5 should be deleted.

(K) Condition A-11 contains a typographical error, missing a space between “in” and “substantial.” The first sentence should read “The applicant shall submit a final site plan that is in substantial compliance with the preliminary plan.”

(L) The applicant has submitted a reclamation plan. Condition A-12 is not warranted.

(M) The first sentence of Condition A-13 should be deleted, as construction plans are not required for this development. As noted in the archeological report, the site is highly disturbed by prior mining activity. Therefore, it is unlikely that any archeological materials exist on the site.

(N) The County has no authority to require the applicant to combine the tax lots on the site. He agreed that the existing tax lots are not legal lots of record, but they are separate tax lots. Condition A-17 should be deleted.

(O) No building or development is proposed that requires provisional acceptance by the County. Conditions C-1 and C-2 should be modified to that effect.

(P) Condition G-1 requires the applicant apply for a building permit within seven years from the date of preliminary plan approval. However, no structures requiring building permits are proposed. That condition should be deleted.

(Q) Noise generated by vehicles operating on highways are exempt from state noise standards pursuant to RCW 40.250.022 and WAC 173-60. Although SE 356th Avenue is a private road, it operates as a public highway, providing access to residential properties adjacent to the road as well as the mine site. As discussed in Attorney General (“AG”) Opinion 1963 No. 5, the RCW and WAC are written in terms of use, rather than ownership. The County Code definition of “roads” includes private roads. Therefore, SEPA condition S-1.b should be deleted.

(R) Expansion of the mining footprint is subject to DNR jurisdiction. SEPA Condition S-1.c should be modified to read “No mining expansion beyond existing footprint without further County land use approval.”

(S) The applicant’s revised sound study, Exhibit 138, determined that the stockpiles on the site have no impact on offsite sound levels. Therefore, SEPA condition S-1.e can be deleted.

b. Mr. Naglich summarized his wetland and habitat reviews of the site.

i. The Oregon white oaks on the site are located close to the south property line, within the vegetated buffer surrounding the active mine. Mining activities on the site will not impact those trees. The applicant will remove one snag and mitigate for that removal by installing the resulting log in the stream buffer and creating a new snag on the site, outside of the mining area. The applicant will also plant additional oak trees on the site.

ii. Some shrubs and trees have begun to repopulate the mine area after mining activity ceased. However, that vegetation does not qualify as regulated habitat, because the growth is occurring in previously disturbed areas of the site. He did not review Gibbons Creek, as it is located more than 200 feet from the proposed disturbance areas. He did not consider impacts to the Steigerwald Refuge, as it is located some distance south of the site, on the other side of Evergreen Highway and SR-14, within the Columbia River floodplain. He did not consider impacts of stormwater discharges to these areas, as that is not proposed by the applicant. No water was flowing in the ditches on SE 356th Avenue when he visited the site in February and April 2021.

c. Mr. Arguea responded to the transportation issues.

i. The traffic study only reviewed sight distance for passenger vehicles; they did not modify the analysis to account for heavy vehicles. However, the available sight distance exceeds minimum standards for such vehicles. More than 1,900 feet of sight distance is available to the east and 1,700 feet to the west, which is more than double the 930-foot minimum AASHTO standard for trucks. They measured sight distance in accordance with AASHTO standards for height and location.

ii. The WSDOT design manual provides a left-turn “guideline” rather than a “warrant.” The guideline recommends further analysis where certain factors exist. The traffic study looked at those factors – sight distance, Level Of Service (“LOS”), and intersection capacity for the SE Evergreen Boulevard/SE Evergreen Highway intersection and determined that projected traffic operations at this intersection will not trigger WSDOT’s left turn guidelines. They did not review the left turn guidelines for eastbound SR-14 as that is a WSDOT facility which the County did not include in the scope of the traffic study.

(A) The additional traffic generated by this development will not change the LOS of the intersection of SE Evergreen Boulevard and SR-14. That intersection is currently operating at LOS B and will continue to do so with the additional traffic from this development, including heavy truck traffic. LOS provides a measure of the delay and storage capacity at the intersection. Traffic from the development will have a minor impact on the capacity of the intersection, reducing capacity by two-percent in the AM peak hour and six percent in the PM peak hour.

(B) There have been six vehicle crashes at the SE Evergreen Boulevard/SR-14. intersection in the past five years, with no heavy vehicle crashes. No significant crash patterns were identified and WSDOT did not raise any

concerns about the safety of this intersection. His firm did not collect crash data for SR-14. They only reviewed crash data at the SE Evergreen Boulevard/SE Evergreen Highway intersection.

(C) SE Evergreen Boulevard is 125 feet long between SE Evergreen Highway and SR-14. When there is a mine truck waiting to turn right onto SR-14, subsequent haul trucks travelling east on SE Evergreen Highway must stop at the stop sign on SE Evergreen Boulevard and wait for the first truck to enter SR-14 before the second truck can turn onto SE Evergreen Boulevard. This will not result in significant delays or create traffic queues on SE Evergreen Highway as all of the intersections are projected to operate at LOS B, which indicates minimal delays.

iii. No traffic queues have been observed on roads in the area. The traffic queues visible in the Google aerial photos that Friends provided were caused by construction activity; pilot vehicles are visible in the photos. (Exhibit 206 at 126/Fex. 4, Exhibit B at 8).

iv. Traffic volumes on SR-14 vary throughout the year for a variety of reasons. They measured traffic volumes in early December, outside of the holidays, when school was in session, capturing the typical peak hour commuter traffic volumes. Saturday traffic volumes are generally lower.

v. As described on page 6 of the traffic report, the applicant's trip generation estimates for the mine were determined based on programmatic data and weekday arrival and departure times observed by the pit operator and project team. The analysis was based on a maximum 340 average daily truck trips. The haul routes are fixed while the employee commuter routes vary. However, the number of non-haul trips was insufficient to trigger a requirement for further analysis.

(A) Although trucks were not hauling gravel from the site at the times of their site visits, the pit has operated and generated truck traffic over the same route for some time and the applicant was able to provide documentation regarding the number and direction of employee and truck trips that occurred when the pit was operating.

vi. The traffic counts used in the analysis were conducted in December 2019 and the traffic analysis was submitted to the County a few months later. Therefore, there was no need to include background growth in the analysis.

vii. All truck traffic from this project will travel to and from the east. The project will not send truck traffic past the schools west of the site.

d. Ms. Parks summarized her sound analysis dated May 6, 2021 (Exhibit 138) and responded to questions from Mr. Telegin.

i. Her firm measured existing ambient sound levels in the area when mining activity was not occurring on the site. During that analysis non-mine related vehicles operating on SE 356th Avenue generated noise in excess of state limits for “instantaneous events,” likely due to garbage trucks serving the surrounding residents.

ii. They modeled sound generated for equipment operating in the pit and haul trucks operating on SE 356th Avenue based on sound data for the types of vehicles and equipment proposed for use on the site. They chose sound measurement and modeling locations based on the location of existing sound receivers (homes, including the second story of two-story homes). Based on their sound models, it is feasible to mitigate noise to comply with state sound limits and the County standard of no more than 5 dB increase above existing ambient sound levels. Mitigation measures include prohibiting truck traffic on SE 356th Avenue before 7:00 a.m. on weekdays and 8:00 a.m. on weekends, limiting truck traffic to 14 trips per hour, and implementing a safe driving protocols that include a 15 mph limit for trucks operating on SE 356th Avenue and requiring that drivers limit acceleration and braking. The mine area will not expand beyond the limits approved by DNR and existing buffer areas around the mine will remain undisturbed.

iii. Lower truck travel speeds are not *per se* beneficial, because sound receivers are exposed to sound for a longer period than they would be if the vehicle were traveling at a higher speed, resulting in a higher Leq.

iv. They did not measure sound generated by vehicles and equipment operating on the site. The sound levels for the trucks and equipment listed in Table 5-1 of her November 2, 2021, sound analysis (Exhibit 87) are from her firm’s database and the sound levels in Table 6-3 are calculated based on database sound levels. Table 6-3 show sound levels at three different “moments in time” as mining progresses. lowering the elevation of the mine floor, and changing the location and type of equipment on the site. The left column of Table 6-3 labeled “BRC Ref.” indicates different model “runs.” Where the same number is listed it indicates that the same model was run, with no changes to equipment type or location, topography, etc., but different hours of operation.

v. They revised the sound analysis model to reflect different types of truck traffic. Exhibit 93 modeled sound based on implementation of the “safe driving protocols” reducing acceleration and travel speeds on the haul road. Exhibit 138 modeled sound levels based on a recently published article cited at the end of the report, which is based on “calm driving” with lower speeds and no excessive acceleration or braking. Rambol, the County’s peer reviewer of the sound analysis reports, agreed with use of the lower sound levels included in the cited study. “Further research” is warranted to determine whether the sound levels generated by trucking activities observed in the cited 2009 study are consistent with trucking activities the site and what the author of the 2009 study meant by “calm driving.” She did not disclose that uncertainty in her analysis.

(A) The January 22, 2021, report should have been replaced by a subsequent report completed on February 16, 2021, but which retained the

cover date of January 22, 2021. That subsequent report should have been submitted to the County but was not.

vi. The sound levels used in the prior reports were from her firm's database and were largely based on noise analyses and publications conducted prior to 2019. The database spans 30 years. The sound study cited in Exhibit 138 (the "Netherlands study" included in the record as Exhibit 206 at 823/Fex. 49) was published in 2009 and is based on trucks operating at lower speeds than the trucks reviewed in her firm's sound database. The analysis was performed on trucks in an industrial setting in Europe. The sound levels in her firm's database were based on trucks operating close to highway speeds, roughly 50 mph.

7. Washougal community development director Mitch Kneipp agreed with the new condition of approval proposed by Mr. Howsley.

8. Attorneys Bryan Telegin and Nathan Baker appeared on behalf of Friends.

a. Mr. Telegin noted that the County has two Code Enforcement officers to cover the entire county, citing Exhibit 206 at 556/Fex. 32).

b. Mr. Baker requested the examiner continue the hearing for 30 days, arguing that the public notice signs were not placed as required by the Code and the project description is inadequate. A sign should have been posted along SE 356th Avenue, where it would be visible to the public traveling on SE Evergreen Highway.

9. The examiner closed the May 10, 2021, hearing sometime after 1:00 a.m. on May 11, 2021, and continued the hearing until 6:00 p.m. on May 11, 2021.

May 11, 2021, hearing:

10. Ms. Park continued her testimony from the May 10, 2021, hearing.

a. She testified that Kristen Wallace, the county's sound study peer reviewer and author of the Rambol report, brought the 2009 study to her attention in January 2021. The BRC sound database includes studies of truck noise, but no sound data from trucks operating at lower speeds. There are two categories of trucks in Table 5-1, trucks that operate in the mine pit, hauling material to the loader and the crusher, and trucks that operate on public roads, hauling processed material from the pit to various construction projects in the region. The noise levels listed in Table 5-1 of the initial sound reports are correct for trucks operating in the pit but are high for highway trucks operating at low speeds. There is limited data regarding highway trucks operating at lower speeds on paved surfaces. The Traffic Noise Model ("TNM") used by the Federal Highway Administration identifies noise levels for highway trucks operating at low speed at 74 dBA, but does not differentiate based on the type of driving: "calm" vs "revving." The truck noise levels in the BRC database overstate noise levels for trucks operating on the haul road, as trucks on the haul road will operate at lower speeds, subject to the

applicant's "safe driving protocols." Although BRC had some data for trucks operating at lower speeds on pavement, that data is all older than 2009.

b. The grade of the haul road impacts truck noise "to some degree," depending on driving practices. Trucks accelerating up a hill will generate "slightly higher" sound levels. The 2009 study reviewed trucks operating on a flat grade. The study did not identify any weight or length limits on the trucks observed in the study. None of the sound models she reviewed noted adjustments for special braking devices other than compression brakes.

c. The only change between the two reports dated January 22, 2021, was the second report submitted on February 16, 2021, accounted for "calm driving." The May 6, 2021, sound report (Exhibit 138) removed the stockpiles from the analysis, which had no impact on the modeled truck noise.

d. Gravel trucks were operating on SE 356th Avenue when they measured sound levels on August 20, 2020. They did not use those sound levels, because those trucks were not operating subject to the "calm driving" protocols. Ms. Parks' assistant performed the on-site sound measurements and did not note how the trucks were being driven. They could have conducted additional on-site analyses measuring sounds generated by trucks driving on SE 356th Avenue subject to the calm driving protocol, but the applicant did not ask them to do so and they did not suggest that to the applicant.

e. There were 11 revisions to the sound analysis for this site.

i. The April 2020 analysis only measured sound levels from equipment, including trucks, operating within the pit. That study did not review sounds generated by trucks operating on SE 356th Avenue.

ii. The July 1, 2020, analysis included sounds generated by trucks operating on SE 356th Avenue.

iii. The September 1, 2020, analysis looked at mitigation for noise generated by trucks operating on SE 356th Avenue, including sound walls on either side of the road, to comply with WAC standards.

iv. The September 29, 2020 analysis primarily involved sound measurements performed on the site, which was facilitated by a relaxing of Covid restrictions. That analysis determined that breaks in the sound wall necessary for access to abutting residences reduced the effectiveness of the walls. Therefore, they modeled the impact of reducing the number of hourly truck trips in order to compensate for the impact of gaps in the sound wall.

v. The October 22, 2020 analysis modeled solid gates in the sound walls.

vi. The November 2, 2020 analysis changed the applicant's contact information to Mr. Howsley's law firm and revised the analysis to model receivers located inside the boundary of properties abutting SE 356th Avenue, because receivers modeled near the sound walls underestimate actual noise levels.

vii. The November 24, 2020 report revised Figure 2-1 of the report, because some symbol labels were not included. They retained the date of this report as November 2, 2020.

viii. The December 31, 2020 report was a new report in response to the County's direction that the proposed sound walls would not be allowed. Therefore, they reviewed other mitigation measures to reduce noise, including reducing the number of truck trips per hour.

ix. The January 22, 2021 report relocated the receivers in the model, back to the property lines, as the modeled receivers had been previously shifted to account for the noise walls.

x. The February 16, 2021 report included "calm driving" as a variable in response to the applicant's "safe driving protocol."

xi. The May 6, 2021 report modeled the impact of removing stockpiles from the analysis.

f. The use of reduced noise generation based on "calm driving" as discussed in the 2009 study "is an interesting variable to take into account." They spoke with Rambol and agreed that it was a reasonable variable to include in the analysis.

11. Eric Hedberg, stormwater engineer for the applicant, summarized his evaluation of the existing stormwater facilities on the site.

a. All stormwater runoff from the site is collected and directed to holding areas prior to infiltration within the pit. Runoff from the western half of the site discharges to infiltration ponds constructed in 1997, in response to the 1996 stormwater overflow event. Runoff from the east side of the site is directed to settling basins, for reuse in the gravel washing process. The infiltration facilities on the site are "some of the most robust [he] has seen." No stormwater has been discharged from the site since the 1996 event.

b. His firm prepared a preliminary stormwater plan, stormwater pollution prevention plan, and a technical information report (Exhibits 81 and 82), which collectively describe stormwater, erosion, and sediment controls, among other things. It is feasible to accommodate all stormwater runoff from the mine as well as post-reclamation runoff within the site. Although ECY only requires the applicant to accommodate runoff from a ten-year storm event from the mine and a 25-year event from the reclaimed site, the facilities on this site can contain and infiltrate runoff from a 100-year storm event.

They also used ECY's Western Washington Hydrology model to analyze stormwater on this site. Their analysis used a conservative approach, assuming less storage capacity than actually exists on the site.

c. No stormwater will leave the site during storms up to a 100-year event. The applicant has pumps on the site that can circulate water within the pit to prevent offsite discharge in the event of a greater than 100-year event.

d. Conditions of approval requiring a stormwater pollution prevention plan and technical information report are superfluous, as the ECY permit covers stormwater management on the site. Management of stormwater on mine sites is different than is required for residential developments with permanent structures compared to a mine where the type and location of surfaces change over time. The County's stormwater code is a "better fit" for analyzing stormwater on non-mine sites.

e. His firm also prepared a Critical Aquifer Recharge Area ("CARA") report, as the site is located in a CARA overlay. That report reviewed groundwater levels and wells in the area and BMPs necessary to prevent contamination of the aquifer. That review documented that mining activities on the site have had no negative impacts to the aquifer, water quality or quantity.

i. The mining processes on the site do not use chemicals or other contaminants that could degrade the aquifer. The primary impact from mining is turbidity from sediment generated during the mining process. However, the infiltration process filters sediments out of the water long before it reaches the aquifer.

ii. The applicant's sand and gravel general permit requires the implementation of BMPs to prevent fuel or other spills and measures to address any spills that may occur. There are no on-site fueling facilities or storage tanks; trucks bring fuel to the site and discharge it directly into equipment and vehicle fuel tanks. The applicant is required to review the stormwater ponds for oil sheen on a daily and address it if it occurs.

iii. Mining activity on the site will have no impact on groundwater quantity, as all stormwater is infiltrated on the site, replicating natural conditions. The applicant does not need to pump groundwater to facilitate mining activity. The groundwater level is roughly 100 feet below the final pit floor. As a precaution, the applicant is monitoring water levels in nearby wells.

f. Pond TP-1 connects to the ditch on SE 356th Avenue, which connects to a ditch and culvert on SE Evergreen Highway. They did not review the extent of the offsite ditch as they ceased their analysis at the boundaries of the site. He did not visit the site prior to the hearing. He based his analysis on a review of exhibits. He read reports that flowing water is frequently observed in the ditch on SE 356th Avenue and he saw a small volume of water in the ditch south of the site, roughly 600 to 800 feet north of SE Evergreen Highway, during his site visit the day of the hearing. There is a headgate

structure on the site that prevents water from discharging from the site into the ditch on SE 356th Avenue when the headgate is closed. The headgate is intended to allow for overflow to the ditch for events in excess of the capacity of the on-site stormwater system, which is designed to accommodate more than the 100 year storm.

12. Erick Staley, geologist for the applicant, summarized the mining plan for the site. In this case the permit boundaries coincide with the boundaries of the site. State regulations require a 30-foot setback from the property boundaries and buffers around wetlands and other critical areas. Vegetation within the setback, shown in green on the site plans, demarcates the limits of excavation. The applicant will implement an incremental phased approach mining plan within the excavation area.

a. Although mining activities have changed the interior topography of the site over time, especially on the eastern portion of the site, there have been no significant changes to the stormwater ponds or the excavated slopes and berms on the perimeter of the site, which direct stormwater runoff into the site.

b. The mine operator will undertake reclamation of previously mined areas of the site as mining continues elsewhere on the site. The operator will use backfill imported to the site to create slopes similar to what existed prior to the start of mine operations and plant vegetation to stabilize the fill and “set the stage” for future residential development. All structures on the site will be removed as part of the final reclamation process.

c. He requested the examiner modify SEPA condition S.1.c, which prohibits expansion of mining operations beyond the existing footprint/line of existing disturbance, and condition A.15, which prohibits clearing or development outside the building envelopes, which some witnesses have suggested should be interpreted as the existing limits of disturbance. The red line on the mining plans shows the boundaries of the existing mining operations, the line of disturbance currently permitted by DNR. Over time the mining activity is intended to extend throughout the site, to the edge of the 30-foot setback or the edge of the critical area buffers, as shown in the reclamation plan. Mining can take years or decades to reach the final site configuration. DNR will require additional bonding prior to approving any expansion beyond the existing line of disturbance.

d. Other conditions refer to “final construction plans.” However, “construction,” in this case excavation of the mine, is an ongoing process that will continue until the aggregate resources on the site are depleted. There is no separate “construction phase” and no “final construction plans.”

e. Condition G.2 requires a permit from ECY for “construction stormwater.” However, stormwater on this site is regulated by the Sand and Gravel permit issued by ECY.

f. Based on his site visits, the bottom of the last stormwater pond is roughly 15 feet below the emergency outlet; a culvert near the top of the pond that allows the pond to overflow during storm events beyond the 100-year storm. When he visited the site on the day of the hearing the pond was nearly dry, with a puddle at the bottom. It was physically impossible for water to flow from the pond into the ditch on SE 356th Avenue. There was a trickle of water in the ditch about halfway between the site and SE Evergreen Highway, but it was not coming from the stormwater ponds on the site.

g. There is an existing topographic divide near the midline of the site which directs stormwater runoff to the east and west. The pond in the eastern portion of the site collects silt laden water from the on-site gravel wash plant as well as runoff from the mine surface. Silt collects in this pond over time, reducing the infiltration rate and allowing water to remain ponded for longer periods. When the mine is operating the operator periodically clears the silt and allow this water to infiltrate. There is no connection between the ponds on the east and west portions of the site.

h. He testified that he has worked on mining projects in 23 of the 39 counties in Washington. Mining activity can fluctuate over time, sometimes “going dormant” as demand for rock declines. Rock crushing, sorting, and other activities may cease for long periods of time until the market demand resumes. ECY’s stormwater permit program allows mines to register as “inactive” but remain covered by the permits and then reactivate the permit when mining activity resumes. Under DNR’s system, permits remain active until the site is fully reclaimed.

13. Attorney Maren Calvert appeared on behalf of Jerry Nutter and Nutter Corporation, the current mine operator. Ms. Calvert noted her clients support of the application as discussed in her written testimony, Exhibit 181.

14. Sean Streeter disputed the applicant’s testimony.

a. The applicant’s traffic analysis failed to consider the operation of school buses and other school related traffic. The school bus schedule is available on the School District’s website and should have been considered in the traffic analysis.

b. A truck operating on SE 356th Avenue lost its brakes and crashed onto the railroad tracks on the south side of SE Evergreen Highway. This is likely to happen again and should have been considered in the SEPA analysis. BNSF runs an average of 40 trains per day on this line, including trains hauling oil and other toxic materials. There are two sets of tracks in this area, a through line and a siding. Trains park on the siding at all hours. A similar crash in the future could strike such a train, causing a major catastrophe.

c. The applicant’s biologists testified that they were unaware of past stormwater runoff from the site flowing into Gibbons Creek and impacting salmon runs, but the 1996 flood discharged sediment laden runoff from the site into the creek.

d. Based on the emails from Mitch Nickolds, the County has no ability or desire to enforce compliance with the conditions of approval at mining operations in the County.

e. The applicant has submitted multiple sound studies with declining estimates of the noise generated by truck traffic on SE 356th Avenue. Mitigation has gone from 12-foot sound walls to requiring drivers comply with “calm driving protocols.” The latest analysis is based on a study of trucks in Europe. However European trucks are significantly different from those operating on this site. Roads in Europe are narrower. Therefore, trucks are smaller. The 2009 study was performed in Holland, a flat country where there is little need for braking and accelerating due to hills.

f. The applicant testified that they will not mine within 100 feet of groundwater, but the Code allows mining within 15 feet of groundwater. The applicant is currently mining below groundwater levels; in 2018 a basin dug on the site immediately filled with groundwater and has remained full ever since. The applicant did not begin rock washing until late spring of 2019. The photo he submitted with his written testimony was taken shortly before the applicant began rock washing activities.

g. Mr. Howsley argued that there is a desperate need for aggregate in Clark County, yet the applicant was hauling 250 truckloads per day to a job site in Portland when the mine was operating between 2017 and 2019. He argued that there is an ample supply of aggregate in the region, based on his observations of other mines and quarries. The Portland project could have obtained material from the mine near 190th and Division in Multnomah County, which would have reduced the travel distance for trucks hauling gravel, reducing greenhouse gas emissions for that project compared to hauling gravel from this site. He argued that the applicant is unfairly undercutting its competitors in order to monopolize the local market.

h. Nutter Corporation has been operating a similar mine in another county in Washington. The hearing examiner for that county stated that, based on their past practices, Nutter Corporation was unlikely to comply with any conditions of approval imposed by the county. The applicant is likely to do the same at the Washougal Pit.

15. Zachary Grice expressed concerns that mining on the site will impact groundwater quality in the area, where many residents rely on private wells for drinking water.

a. He questioned the County’s inclination and ability to enforce compliance with any conditions of approval and applicable laws. The applicant was previously conducting unpermitted rock crushing activity on the site, yet there were no repercussions for that violation. The applicant objects to unannounced inspections by County enforcement personnel in order to hide potential violations.

b. He questioned the accuracy of the applicant’s on-site sound analyses, which involved the use of a single apparently empty truck, without a trailer, which does

not reflect actual operations on the site. Different trucks from different vendors have different sound impacts, some of which are very loud and obnoxious, sometimes unbearable.

c. The applicant now proposes to limit truck traffic to 14 one-way trips per hour, which equates to 154 trips over the course of an 11 hour day. However, the traffic study assumes 340 truck trips per day. Mine operations occurring from 6:00 a.m. to 6:00 p.m. and truck traffic from 7:00 a.m. to 6:00 p.m. leaves area residents with little or no opportunity to enjoy outdoor activities on their properties. His family has had to yell at each other in order to carry on a conversation on their back deck while trucks were operating on SE 356th Avenue. The hours of operation should be further limited, especially on weekends and evenings, to reduce the impact of the mining operations on existing residents.

d. Truck traffic on SE 356th Avenue generates significant dust. The applicant has used a sweeper truck in the past, but it just kicks up more dust, making things worse, not better. When a water truck is used to wet the roadway and suppress the dust, sediment laden water runs into his driveway.

e. When the applicant was operating the mine in 2018, they were generating more than 200 truck trips per day, causing congestion on SE 356th Avenue and making it difficult to turn in and out of his driveway. Truck traffic also increased delays at the intersections of SE Evergreen Highway/SE Evergreen Boulevard, and SE Evergreen Boulevard/SR-14.

f. WSDOT recently installed roundabouts on SR-14 in the City of Washougal, which slow traffic and create congestion, especially during rush hour. Truck traffic from the mine may make this issue significantly worse.

g. Noise from increased truck traffic on SR-14 will impact the Steigerwald Lake Wildlife Refuge, which is located south of SR-14 at the SE Evergreen Boulevard intersection. Noise will impact wildlife in the Refuge and the ability of Refuge visitors to enjoy nature.

h. Truck traffic from the mine impacts his children, as they want to walk and bike on SE 356th Avenue in order to visit friends. They homeschool their children and truck noise makes it very difficult for them to concentrate on their lessons.

16. Garry Carpenter summarized his written testimony, Exhibit 26. He noted that he was testifying on behalf of himself, his wife Kathy, and their neighbors, Mr. and Ms. Good and Mr. and Ms. Dunn.

a. The sound analysis did not consider noise from backup warning beepers for equipment operating in the mine. These devices are required to generate sound at 104 dB but they are exempt from WAC regulations. 30 to 40-percent of the vehicle traffic in

the pit is in reverse, generating noise that will impact area residents as well as students at Jemtegaard Middle School located roughly 1,550 feet southwest of the site.

b. The mine will create an attractive nuisance and hazard for children. Although the site is fenced and posted “No Trespassing,” given its proximity to the school, children will try to sneak in. Heavy equipment and trucks operating on the site would pose a significant risk to children.

17. Jody Akers testified that she has lived near the mine for 23 years and has observed a number of different companies operating the site. Nutter Corporation has been the worst, blatantly disregarding neighbor’s concerns and objections. They will not comply with conditions of approval imposed by the County and the County does not have sufficient enforcement personnel to monitor the site and ensure compliance.

a. Although no truck traffic is proposed prior to 7:00 a.m., idling trucks often line up at the access gate to the site at 6:30 a.m. and the gate opens at 6:45 a.m.

b. Trucks leaving the site pass by their house, traveling downhill and generating noise from engines and brakes all day long. She works from home and truck noise often interferes with her ability to hear phone calls inside her home. Drivers frequently ignore the speed limit on SE 356th Avenue, driving up and down as fast as they can. Her son cannot safely walk to school due to the volume of truck traffic on SE 356th Avenue. Truck drivers frequently swing out onto the shoulders of SE 356th Avenue and SE Evergreen Highway as they travel to and from the site, damaging the pavement.

c. Mining activities and truck traffic generate significant amounts of dust, which covers her home, vehicles, and landscaping. She must change her air filters every 30 days, as they become coated in dust. The applicant sprays water on SE 356th Avenue to suppress the dust, but that only lasts 15 – 20 minutes, then the dust returns. Water truck operators used the fire hydrant at Sunset Road to fill their tanks until the City of Washougal prohibited that and the applicant stopped watering the road altogether. The applicant only sweeps the road once a day and only when the road is dry, which generates more dust.

d. In 2018 the applicant cleared vegetation that had grown up on the shoulder of SE 356th Avenue. They ground up the trees and other vegetation, leaving the debris in the ditch, obstructing the flow of stormwater. If the applicant’s stormwater ponds fail or otherwise discharge stormwater into this clogged ditch it will flood adjacent properties.

e. There is pullout area on the eastbound shoulder of SR-14 at the SE Evergreen Boulevard intersection that provides a viewing area over the Steigerwald Refuge. Eastbound drivers frequently drive through this turnout to bypass vehicles waiting to turn left onto SE Evergreen Boulevard from SR-14, creating a hazard for anyone using the viewing area. SE Evergreen Boulevard can only accommodate one truck, so multiple trucks are often stopped on SR-14 waiting to turn left. She changed her

driving habits while the mine was operating, turning left on SE 32nd Avenue and traveling east on SE Evergreen Highway due to safety concerns at this intersection. The volume of traffic on SE Evergreen Highway has doubled as a result of Covid, as people seek opportunities for outdoor recreation.

f. The mine impacts wildlife in the area; there are no birds on her property when the mine is operating.

18. Malcom Deighton expressed concern that the mine operation may create a hazard for his three young children. Trucks often cause traffic backups on eastbound SR-14 as they wait to make a left turn onto SE Evergreen Boulevard and on northbound SE Evergreen Boulevard as they wait to turn left onto SE Evergreen Highway. This creates a risk of rear-end collisions on the highway. Turn lanes and lighting are needed on eastbound SR-14 to alleviate this hazard.

19. David Grice testified that noise from trucks traveling past his home makes it difficult for him to focus on his schoolwork. The noise of trucks operating on SE 356th Avenue wakes him up at 7:00 a.m. every morning. Truck traffic makes it difficult for him to walk his dog on SE 356th Avenue.

20. Mr. Baker testified that he represents Friends of the Columbia Gorge. Bryan Telegin and Audrey Clungeon work for the Bricklin & Newman law firm and represent Friends of the Columbia Gorge and six landowners in the area of the site: Jody and Paul Akers, Rachel and Zachary Grice, and Karen and Sean Streeter. Gary Kahn and Peggy Hennessey of the Reeves Kahn Hennessy & Elkins law firm represent Friends of the Columbia Gorge, the six landowners, as well as five other landowners.

a. He noted that the County issued two MDNSs in this case. The second MDNS states that the first MDNS was preliminary, but that is not indicated by the text of the first MDNS. This resulted in four SEPA appeals, two from the applicant and two from Friends of the Gorge.

b. There are two schools southwest of the site, Jemtegaard Middle School and Columbia Gorge Elementary School, that will be impacted by the proposed mine.

c. The applicant resumed mining operations on this site in 2017 without County approval. The Gorge Commission, ruling on an appeal of a County enforcement order, concluded that that mining activity was illegal. The applicant also installed an underground conduit for a future powerline adjacent to SE 356th Avenue without required permits, in violation of NSA regulations. With this application the applicant is seeking approval of all mining activities that occurred between 2017 and 2019, including the unpermitted powerline conduit.

d. SE 356th Avenue acts as a haul road, providing access to and from the mine site, as well as access for several abutting residential properties. This is a narrow road with no sidewalks, which carries numerous truck trips in both directions.

i. The applicant cannot use SE 356th Avenue as a haul route for the mine. At one point SE 356th Avenue was a legally permitted haul route for the mine. However, that use was lost when the mine ceased operating for more than one year. With this application the applicant is seeking to restore its right to use SE 356th Avenue as a haul route. However, current zoning prohibits use of the haul route. Parcels 133044000 and 1334202000 are zoned GLSA-40 (Gorge Large-scale Agriculture, 40-acre minimum lot size). Parcels 134201000, 134219000, and 134200000 are zoned GR-5 (Gorge Residential, five-acre minimum lot size). Only parcel 133044000 is subject to the County's surface mining overlay zone. SE 356th Avenue, the proposed haul route, is located in the GR-5 zone. Mining is not an allowed use in the GR-5 zone and the Gorge Commission has ruled that hauling constitutes mining. (Exhibit 193 at 8/Fex. 55). Therefore, this application must be denied, because the use of SE 356th Avenue as a haul road is prohibited.

21. Attorney Gary Kahn appeared on behalf of Friends Of The Columbia Gorge and 11 individuals: Jody and Paul Akers, Zachary and Rachel Grice, Edmond and Kimberly Murrell, Richard Ross, Karen and Sean Streeter and Greg Misarti Eleanor Warren.

a. He argued that the application is incomplete, as it has not been signed by the owners of all properties that are the subject of the application.

i. The examiner previously ruled that an incomplete application cannot be processed. (Yang Gorge Permit, APL2017-0004, Exhibit 206 at 787/Fex. 48). This is consistent with CCC 40.240.050.H.1 and the Gorge Commission's decisions in *Bacus* and *Eagle Ridge* (Exhibit 206 at 761 and 776/Fexs. 46 and 47). CCC 40.240.050A(2) requires that an application must "[b]e completed pursuant to this section..." in order to be reviewed. CCC 40.240.050A(2). All property owners must sign the application; CCC 40.240.050A(4)(u) requires that the application be signed by the applicant and property owner, or that the application include a statement that the property owner is aware of the application. The Gorge Commission has ruled that even the owner of a conservation easement must sign the application. (*GLW Ventures v. Skamania County*, Exhibit 206 at 729 and 734/Fexs. 42 and 47).

ii. In this case a portion of the haul road, the powerline conduit, water line, and drainage ditch are located on parcel 986031308, owned by John and Joy Anderson and the Andersons have not signed the application. The Andersons acquired title to this parcel in 2014 via a quitclaim deed (Exhibit 206 at 582/Fex. 38). Absent the Andersons' signature, the application is incomplete.

b. The applicant developed the ditch on SE 356th Avenue in the fall of 1996 without required County approval. ECY documented two stormwater discharges to that ditch. The County and the Gorge Commission both brought enforcement actions against the applicant, which resulted in a consent decree in 1997. The consent decree prohibits discharge of stormwater runoff from the site into Gibbons Creek and required the applicant to obtain land use approval of the ditch. The applicant filed an application

for approval of the ditch, but the application was never completed. The stormwater facilities on the site are connected to this ditch, which discharges into Gibbons Creek, in violation of the consent decree. Water began flowing in the ditch when the applicant resumed mining on the site between 2017 and 2020.

22. Rachel Grice summarized her written affidavit (Friends Exhibit 2, page 8 of Exhibit 206).

a. She, her husband, and their four children ages 11 to 15 have lived on their property abutting SE 356th Avenue since January 2018. She homeschools the children between 8:30 a.m. and 3:00 p.m. in their garage, which they have converted to a schoolroom. The garage/schoolroom is on the northeast corner of their residence, the portion of their residence that is closest to SE 356th Avenue. She showed a photo illustrating the view from the schoolroom (Exhibit 206 at 378/Fex.15). Truck traffic and noise on SE 356th Avenue, including squealing brakes, is “a noise nightmare, disruptive and stressful, making it difficult for her children to read aloud and discuss their schoolwork. Some days truck noise forced them to move the classroom elsewhere in their house. The section of SE 356th Avenue between the Akers property and her home is the steepest portion of this road, which affects the volume and type of noise generated by trucks operating on this road section as outbound trucks must use their brakes and other descent controls and inbound trucks must use more engine power to ascend the hill, which generates additional noise on this section of roadway.

b. There are often multiple trucks on the roadway at the same time, including a street sweeper and water trucks hauling water to the site or watering the road to suppress dust. Trucks drove past their residence many times per hour when the mine was operating between 2017 and 2018. She showed videos she took in 2018 of loud trucks with squealing brakes passing her house. (Exhibits 207 and 208/Fex. 50 and 51). Some trucks were especially loud and each truck would pass the house twice an hour as they traveled to and from the site. Trucks routinely exceeded the posted 10 mph speed limit on SE 356th Avenue, with most traveling 20 mph or more when traveling to and from the mine. The employee who unlocks the gate in the mornings drove a very noisy truck and would often drive past as early as 5:40 a.m. as well as several times throughout the day. In addition, the applicant was conducting a variety of construction and/or maintenance activities on SE 356th Avenue: cutting trees, installing utilities, etc.

c. They were unable to keep their windows open due to the dust and noise generated by the applicant’s activities. The applicant’s street sweeper generated considerable airborne dust. (Exhibit 206 at 380/Fex. 16). When it was operating, the sweeper typically made two to three passes on the road.

d. She showed photos taken while the applicant’s consultant was conducting sound analysis on SE 356th Avenue on August 19 and 20, 2020 (Exhibit 206 at 356/Fex. 9). There were no gravel trucks operating on SE 356th Avenue on August 19. On August 20 the consultant ran a single dump truck without a trailer up and down the road every two or three minutes. The truck was smaller than the trucks that hauled gravel

from the mine in 2017 and 2018 and it appeared to be unloaded, as aggregate was not visible in the bed of the truck.

23. Due to the late hour, the examiner closed the May 11, 2021, hearing and continued the hearing until 6:00 p.m. on May 27, 2021.

May 27, 2021, hearing:

24. Ms. Grice continued her testimony.

a. She noted that the street sweeper did not operate on a set schedule. It would usually come a couple of times a week. When it was operating, it would usually make two or more two-way trips up and down SE 356th Avenue. The sweeper would generate clouds of dust that would settle on vehicles parked in her driveway. They could not use their front yard until the dust had settled. The sweeper would also operate on the section of SE Evergreen Highway between SE 356th Avenue and SE Evergreen Boulevard. (Exhibit 206 at 359/Fex. 9). Noise from the street sweeper was loud and it operated a slow speed, taking some time to pass by their home.

b. Vehicle traffic from the mine created a hazard for her family, making it difficult to enter or exit their driveway intersecting SE 356th Avenue. At times there were five to eight trucks on SE 356th Avenue simultaneously. They have to cross the street to collect their mail. They walk their dogs twice a day on SE 356th Avenue with large trucks passing in close proximity. Their children walk and bike on SE 356th Avenue to travel to the school for sports practice and for recreation. The height of the gravel trucks limits the drivers' view of pedestrians walking on the road, especially children.

c. The section of SE Evergreen Highway south of the site has a posted speed limit of 50 mph. Oncoming drivers are often forced to slow down as trucks towing trailers pull onto the highway from SE 356th Avenue.

d. Trucks often cause traffic backups on eastbound SE Evergreen Highway between SE 356th Avenue and SE Evergreen Boulevard. A truck waiting to turn right onto SR-14 from SE Evergreen Boulevard occupies the entire length of SE Evergreen Boulevard, forcing subsequent trucks to wait on SE Evergreen Highway. She frequently saw traffic backed up behind two trucks. There are rarely any delays at this intersection when the mine is not operating. Westbound traffic on SR-14 approaching SE Evergreen Boulevard is traveling downhill at 60 mph or more, making it difficult for large trucks to turn onto SR-14 without slowing traffic on SR-14. She has had to wait for one minute for sufficient clearance to make a right turn at this intersection.

e. Traffic often backs up on eastbound SR-14, as vehicles slow down or stop to turn left onto SE Evergreen Boulevard. A bridge west of this intersection limits sight distance for eastbound vehicles, creating a risk of rear-end collision with vehicles waiting to turn left onto SE Evergreen Boulevard. Some drivers use the viewpoint pullout on the south side of SR-14 to pass vehicles waiting to turn left.

f. Students traveling in buses, cars, bike, or on foot from areas east of the site must travel on the section of SE Evergreen Highway between SE Evergreen Boulevard and SE 356th Avenue in order to reach the schools west of the site. SE Evergreen Highway is also a popular route for runners and cyclists. The schools generate traffic all day every day for classes and sports. There are two existing baseball fields at the school with a third under construction. These fields are used all day on Saturdays and Sundays and generate traffic on SE Evergreen Boulevard.

g. On July 19, 2018, a loaded gravel truck traveling southbound on SE 356th Avenue lost its brakes, crossed SE Evergreen Highway and crashed onto the railroad tracks south of the highway. Trains hauling oil and other chemicals frequently operate on this section of the railroad and stop on the siding for long periods. She showed photos of the crash and trains hauling tanker cars on the tracks south of the Highway. (Exhibit 206 at 363/Fex. 11).

h. Water frequently flows in the ditch on the east side of SE 356th Avenue, carrying water from uphill, presumably from the mine. She has seen water flowing in the section of ditch near the gates to the site. The water in the ditch can be murky/milky colored. (Exhibit 206 at 375/Fex. 14).

25. Transportation planning consultant Ross Tilghman summarized his education and experience and his written analysis of the applicant's traffic study (Exhibit 206 at 111/Fex. 4) and responded to questions from Ms. Calvert.

a. He argued that the applicant's traffic study was a "limited study," primarily focused on concurrency, Level Of Service and traffic operations during the weekday p.m. peak hour, with limited safety analysis. Concurrency review is intended to verify that adequate infrastructure is available to carry the volume of traffic a project is expected to generate. It does not address safety. The applicant's analysis did not follow SEPA guidelines, as it failed to note the presence of schools west of the site and the interaction of mine traffic with school related traffic on roads in the area. The "study area" was defined by employee trips rather than truck trips. It did not include an analysis of the crash history. The study did not review pedestrian and bicycle traffic on roads carrying mine traffic. WAC 197-11-444 defines traffic hazards as an element of the environment that the County must review. However, Mr. Arguea testified that traffic safety was not relevant to the SEPA appeal, citing "hearing record 4, minute 38." This project poses a number of traffic safety issues.

i. Eastbound vehicles on SR-14 must stop in the travel lane in order to turn left onto SE Evergreen Boulevard, creating a hazard for eastbound through traffic which is traveling at 55 mph or more on this section of highway. The majority of traffic on eastbound SR-14 continues east past this intersection and these drivers are not expecting to stop. Traffic volumes from the mine exceed the WSDOT guideline threshold for consideration of a left-turn lane at this intersection, even with a condition limiting

truck trips to 154 ADT. The applicant appealed that proposed condition and plans to generate up to 340 ADT.

ii. SE Evergreen Boulevard is only 90 to 100 feet long, which provides sufficient storage to accommodate a single 68-foot truck and trailer and a single passenger vehicle. Other drivers must wait on SE Evergreen Highway before they can turn onto SE Evergreen Boulevard, causing backups on the highway. (Exhibit 206 at 126/Fex. 4 Exhibit B at 8 and Exhibit 206 at 350/Fex. 8 at photo 6).

iii. The viewpoint pullout on the south side of SR-14 at SE Evergreen Boulevard includes interpretive signs related to the Steigerwald Refuge. Tourists stop in the viewpoint to read the signs and view the Refuge. Google Earth images show a flatbed trailer parked in the pullout, just east of the SR-14 /SE Evergreen Boulevard intersection. Eastbound drivers using the pullout to pass stopped vehicles waiting to turn left onto SE Evergreen Boulevard will pose a significant hazard for vehicles and pedestrians in the viewpoint pullout. Trucks, especially loaded trucks with trailers, accelerate slowly, requiring larger gaps in oncoming traffic to complete their turns, causing greater traffic backups and more incentive for through vehicles to attempt to pass on the right.

iv. The roads in this area are narrow and there are no shoulders. Pedestrians and cyclists must travel on the edge of the vehicle lanes. Pedestrians and cyclists must cope with vehicle traffic under existing conditions. However, mining operations will generate new traffic primarily consisting of larger, wider, and heavier gravel trucks.

v. There are four school bus stops between SE 356th Avenue and SE Evergreen Boulevard, which is part of the applicant's haul route.

b. The applicant's traffic counts, taken in December 2019, do not reflect average traffic conditions. Based on WSDOT traffic data, December, January, and February are the lowest traffic volume months on the section of SR-14 near the site, as shown in the graph on page 2 of his report. Traffic volumes may double in the summer months. (Exhibit 206 at 120/Fex. 4, Exhibit B at 2). The applicant's analysis made no attempt to "scale up" and average out their traffic count numbers to account for higher traffic volumes in the summer months and did not disclose this issue in their report. Increased traffic volumes increase the risk of collisions and other hazards. Seasonal fluctuations in traffic volumes are independent of the limitations on mine traffic proposed by the County.

c. The fact that these intersections are projected to operate at LOS B with traffic from the mine is irrelevant to determining whether these intersections are hazardous. Level of service analysis is not relevant to predicting the risk of crashes.

d. The applicant's sight distance analysis is based on the sight distance requirements for passenger vehicles. Loaded gravel trucks require greater sight distance, given their slower rate of acceleration.

e. Gravel trucks may use "descent control devices" in addition to friction brakes to retard their speed. Descent control devices generate noise in addition to noise from vehicle engines and brakes. The applicant's noise analysis did not consider the impact of sounds generated by such descent control devices.

f. The 2009 study cited by Ms. Parks does not provide an accurate model of mine truck noise generated at the site. That study evaluated trucks operating at a warehouse/distribution facility in the Netherlands. The trucks reviewed in that study are significantly different than the trucks hauling gravel from the site. The trucks reviewed in the study are smaller and lighter than the gravel trucks serving the site. As shown in Figure 1 of that study, they are "blunt nosed" trucks with short cabs that provide greater maneuverability on European roads. (Exhibit 206 at 825/Fex. 49 at Figure 1). European Union ("EU") regulations limit these trucks to a maximum length of 61 feet and a maximum weight of 97,000 pounds. In addition, trucks in the study were hauling single enclosed trailers rather than the open trailer and "pup" trailer combinations used on the site. (*Id.*). The trucks in the study were hauling goods, not dirt and gravel. They were operating on a flat surface. Mine trucks must accelerate up the hill on SE 356th Avenue and brake on the way down, generating additional noise.

g. The applicant's traffic analysis makes no mention of the truck that lost its brakes descending SE 356th Avenue and crashed onto the railroad tracks and it failed to propose any mitigation to prevent similar crashes in the future. As stated in WAC 197-11-794, an impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred. A truck hitting a pedestrian or cyclist would likely result in their death, a very severe impact that must be considered.

h. Truck traffic volumes may vary over time as the demand for gravel fluctuates. The site generated 452 daily trips in the summer of 2018, a 33-percent increase over the truck volume used in the applicant's analysis.

i. The applicant's analysis should review known and likely haul routes other than just the route between the site and westbound SR-14. This analysis is only reasonable if the mine will not serve customers to the north or east of the site or within the City of Washougal.

j. He testified that he is a transportation planner, not a licensed engineer. He did not visit the site or take measurements in the field.

26. Sound engineer Adam Jenkins summarized his written testimony (Exhibit 206 at 139/Fex. 5) and responded to questions from one of the applicant's attorneys, David

Bowser. He testified that he reviewed all of the applicant's sound studies, although his written testimony did not include his review of the May 6, 2021, study.

a. The County Code adopts the noise standards in WAC 173-60, which limit noise to 60 dBA at the property line of residential properties, defined as "Class A receivers." WAC 173-60 establishes a base limit of 60 dBA, known as L_{25} or "the base limit." The WAC standard allows higher noise limits for short duration noise events: 65 dBA for 15 minutes in an hour (L_8), 70 dBA for five minutes in an hour (L_2), and 75 dBA for 1.5 minutes in an hour (L_{max}). The WAC prohibits any noise in excess of 75 dBA. In addition, the County's SEPA policies note that "[a]n increase of more than five (5) decibels (dBA) over ambient noise levels at the receiving properties may be considered significant." CCC 40.570.080.C(3)(g).

b. Decibels (dB) are a logarithmic expression of sound pressure. An eight to ten dB increase in noise is perceived as a doubling of loudness. In addition, the character of a sound (pitch and frequency) can affect the significance of a particular noise, causing subjective annoyance. A fan and a backup beeper may generate the same dB noise level, but most people perceive a beeper as more annoying.

c. Most sound studies use L_{eq} , the average sound level per hour, and L_{max} , the maximum sound level per hour, and compare those to the base limit and L_{max} . However, a proper assessment of actual truck noise levels would include the percentile sound levels, L_{25} , L_8 , and L_2 , rather than L_{eq} and L_{max} .

d. There is no required standard for measuring ambient noise levels. However, his firm regularly measures background sound for a minimum 72 hours (three days) and they try to conduct a full week of monitoring. His firm measured ambient sound levels in the area of the site when the mine was not operating. They measured ambient noise at the Akers residence for a full week, for more than three days at the Grice residence, and more than four days at the Streeter residence. The applicant's study only measured 24 hours of ambient noise.

e. The applicant's initial studies considered mining operations to be part of the "existing conditions." The applicant's studies failed to analyze noise without mining activity.

f. The applicant has submitted seven different versions of its noise analysis. It is highly unusual to have so many different analyses for a single project.

i. The results of the applicant's analysis changed over time, with early versions predicting significant noise impacts and proposing solid noise walls and gates to mitigate noise from trucks operating on SE 356th Avenue. The predicted sound levels, L_{max} and L_{eq} , also changed over the course of the studies, based on reductions in the number of truck trips per hour and reductions in the predicted truck noise, declining from 81 dB L_{max} and 71 dB L_{eq} at 50 feet, to 76 and 75 dB in the report dated January 22,

2021 (Exhibit 93) and 71 and 70 dB in the May 6, 2021 report (Exhibit 138). This constitutes a ten dB reduction in L_{\max} and an 8 dB reduction in L_{eq} .

ii. The truck noise estimates used in the applicant's reports were not based on field measurements. They are predicted sound levels from a computer simulation of field conditions. The predicted sound levels used in Table 6-3 of Exhibit 138 are based on truck noise levels listed in a 2009 sound study of trucks in the Netherlands. (Exhibit 206 at 823/Fex. 49). Table 4-2 of Exhibit 138 shows field measurements of trucks operating on SE 356th Avenue on August 18 and 19, 2020, with a measured L_{\max} of 90 dB. The applicant's analysis makes no mention of these field measurements of noise.

(A) The applicant's sound consultant argued that its sound database only included sounds generated by trucks operating at highway speeds. They did not have data for trucks driving at lower speeds on a paved surface. However, the applicant could have obtained such data by measuring noise generated by loaded gravel trucks and trailers operating at slow speeds on SE 356th Avenue and used that information in its analysis. Instead, they relied on data from the 2009 Netherlands study, which does not reflect actual conditions on the site. Most sound analysts only use database noise levels when it is not possible to measure actual sound levels.

(B) It is not typical for a peer reviewer to suggest using a particular noise database or noise study. While it's common for colleagues to share data references, a third party peer review is more formal than casual discussions between colleagues. It would be highly irregular for a 3rd party peer reviewer to introduce an entirely new piece of data.

(C) Additional information is needed to determine whether the trucks used in the 2009 study are consistent with the trucks operating on this site. Vehicle noise results from a combination of engine noise, tire noise, and brake noise. Tire noise is less of a factor at lower speeds. Engine noise varies with different types of motors, loads, grades, and payloads. Grades and inclines affect truck operations, generating more noise compared to trucks operating on flat topography. Engines are louder when a truck is traveling uphill and brakes are louder when traveling downhill. Truck weight can also affect noise. Larger trucks hauling larger loads and longer trailers utilize larger motors which can increase engine noise. It is important to understand the various types of vehicles that may be used at a particular site, whether they are newer or older vehicles, how they are maintained, whether there is a mix of truck types, etc. Noise differences between various trucks can average out in the L_{25} or L_{eq} standard. However, L_{\max} is based on the "worst"/loudest truck that is expected to access the site. Newer trucks are typically quieter than older trucks.

(D) The Federal Highway Administration handbook identifies typical dump truck noise at 84 dB L_{\max} at 50 feet from the vehicle. He found two articles reviewing noise generated by mine trucks. A 1999 study by Pataki et. al., noted a haul truck on a ten-percent grade generating noise between 84 and 86 dB and an

idling haul truck generating 78 dB measured 50 feet from the vehicle. A second study by the U.S. Department of Transportation published 2.5 years ago measured gravel haul truck noise at 89 dB L_{max} , measured 50 feet from the vehicle, without specifying the vehicle speed or road grade. Gravel haul trucks used on this site are likely to generate similar noise levels.

(E) The applicant's noise analyses reduced the referenced sound levels for haul trucks from 81 to 76 dB L_{max} and from 78 to 75 dB L_{eq} between the applicant's December 31, 2020, and January 22, 2021, reports, based on the assumption of "calm driving." (Tables 5-1 of Exhibits 92 and 93). These sound levels were reduced again to 70 dB L_{eq} and 71 dB L_{max} for the January 22, 2021, report (Table 5-1 of Exhibit 138). However, dump truck noise generated during "calm driving" cannot be lower than truck noise at idle, which the 1999 study by Pataki et. al. measured at 78 dB.

(F) The Grices' video shows brake noise measured at 89 dB L_{max} , measured inside the Grices' property, halfway down their driveway. The sound measurement device used in the video was accurate within 1 dB, based on his calibration check. This demonstrates that gravel trucks operating on SE 359th Avenue will exceed 80 dB L_{max} , measured at the boundary of adjacent residential properties.

(G) As a general rule of thumb, sound levels decline by six dB for every doubling of distance; from 10 to 20 feet, 20 to 40 feet, 40 to 80 feet, etc.

iii. Trucks driving at lower speeds without significant changes in acceleration will generate lower noise levels. However, in his experience, it is not reasonable to rely on "calm driving protocols," as it is not practical to maintain the strict oversight and enforcement required to ensure compliance and maintain the predicted sound levels.

iv. Sound studies frequently use published noise data for various vehicles and equipment where it is not possible to measure actual noise on a site. However, where it is feasible to measure actual noise, such as loaded gravel trucks traveling up and down 356th Avenue, direct noise measurements are by far the preferred method of analysis.

v. In addition, the applicant's analyses failed to consider the County's SEPA policy that a five dB increase above ambient noise levels may be significant. The applicant's analysis included ongoing mining activities in its analysis of existing conditions. They failed to provide an analysis of increased ambient noise levels without the mine. His firm measured ambient noise levels at the Grice residence at 45 dB L_{eq} (Table 1 of his report, page 152 of Exhibit 206). Table 6-3 of the applicant's January 22, 2021, analysis (Exhibit 93) predicts noise levels of 59 dB L_{eq} , a 14 dB increase above ambient noise levels, significantly more than the five dB increase the Code identifies as significant. This will be perceived as three to four times louder than existing ambient noise levels. In addition, because mining trucks are a new and different noise source, this

noise will also likely be perceived as more annoying. Similar increases above ambient noise levels are predicted for the Akers and Streeter residences.

(A) He opined that the County's SEPA policy, that a five dB increase above ambient noise levels may be significant, is based on guidelines developed by the EPA in response to the 1972 noise control act. The guidelines were intended for jurisdictions in the Pacific Northwest to use in their EIS analyses of noise. Although these guidelines were never adopted, they are frequently cited as a reference in professional noise studies. Those guidelines note that noise level increases less than five dB generate few complaints and do not require attention or mitigation. A five to ten dB increase will generate more complaints and warrants consideration of mitigation. Increases of more than ten dB over ambient noise levels will generate a substantial number of complaints, impacts are considered serious, and mitigation is warranted.

(B) The County SEPA policy provides that a five dB increase "may" be significant. WSDOT regulations state that a ten dB increase "is significant." In this case, the applicant is predicting a 14 dB increase over ambient noise levels.

vi. The applicant's analysis notes that traffic on SR-14 and aircraft flyovers contributed to the noise levels measured on the site, but it is feasible and common practice to screen out aircraft and highway noise when measuring noise levels.

vii. Based on his analysis of ambient sound levels in the area, the applicant's noise studies, the Grices' noise data, and published sound data, this project will result in significant adverse noise impacts.

27. The examiner closed the May 27, 2021, hearing and continued the hearing indefinitely.

March 1, 2023 hearing

28. Mr. Jenkins summarized his written reports dated May 10, 2021 (Exhibit 206 at 140/Fex. 5) and February 22, 2023 (Exhibit 260) and Friends' PowerPoint presentation (Exhibit 215 at 5/Fex. 57).

a. He testified that he collected ambient sound levels along SE 356th Avenue over a number of days. Table 1 of his May 10, 2021, report shows the measured range of L_{max} and L_{25} as well as the median of the measured range. Table 3 of his May 10, 2021, report shows the applicant's predicted sound levels. The predicted sound levels at the Grice residence will be 14 dB higher than the median ambient sound level, which will cause a significant impact at this location. Based on the County's SEPA policy, an increase of five dB over ambient may be a significant impact. WSDOT, ODOT, and the Federal Transit Administration (the "FTA") use a sliding scale of five to ten dB as significant. FTA policy considers an increase of more than ten dB as a severe impact

and the EPA notes a ten dB increase over ambient results in a substantial number of complaints.

b. He disagreed with CENSEO's assertion that it would be more appropriate to use L_{eq} rather than the median sound level. The WAC does not use L_{eq} . It uses percentile sound levels and only the median can be used to generate a single-value summary of a data range. L_{eq} is an hourly average and L_{max} is a maximum, neither of which can be used to determine compliance with the 15, five and 1.5 minute limits in WAC 173-60-040(2)(c). Many firms overlook this issue, especially those that are not familiar with the requirements of Washington law. Therefore, he compared the median ambient L_{25} sound levels with the applicant's predicted L_{eq} levels. Typical hourly L_{eq} and L_{25} levels differed between two and three decibels. So use of L_{eq} versus L_{25} would not alter his analysis or his conclusion that sound generated by the use will have a significant adverse impact due to increases over ambient noise levels.

c. Using the applicant's truck sound level, noise generated by aggregate hauling trucks operating on SE 356th Avenue will "clearly exceed" all of the sound level limits in WAC 173-60-040(2)(a) and (c) at the nearest boundary of adjacent residential properties.

i. The applicant projects truck noise levels of 71 dB L_{max} at 50 feet. The western boundary of the Grice property at the driveway is 28 feet east of outbound trucks operating on the haul road. Going south, the road curves slightly to the west, moving trucks closer to the Grice property line and residence as they travel south along the 450 foot long boundary between the Grice property and the haul road, moving trucks closer to the property boundary. At this distance sound levels from outbound trucks will be roughly 76 dB at the boundary of the Grices' property.

ii. Truck noise will exceed the maximum sound level allowed by WAC 173-60-040(2)(c), 75 dBA for no more than 90 seconds per hour. A truck traveling at 15 mph takes about 20 seconds to pass the 450-foot length of the Grice property while generating noise at 76 dB. 14 truck trips per hour will result in noise at 76 dB for 280 seconds per hour, well in excess of the maximum allowed sound levels.

d. The Netherlands study CENSEO used as a noise source in its most recent sound analysis is not a reliable source for modeling truck noise on the haul road, as the conditions in the Netherlands study are different than the conditions on the site. The Netherlands study involved different types of trucks on flat terrain and the study did not include any information about the type, weight, or length of trucks reviewed, all of which can affect truck noise. The applicant could have measured actual sound levels by driving loaded gravel trucks with pup trailers up and down SE 356th Avenue subject to the proposed "calm driving" standards to confirm that the truck noise data in the Netherlands study is comparable to truck noise on the site.

e. Given these issues, the applicant's sound analysis is insufficient and the County's MDNS is not based on reasonably sufficient information.

29. Water resources engineer Dr. Robert Roseen summarized his written testimony, Exhibit 264 and his PowerPoint presentation, Exhibit 303.

a. He argued that stormwater from the site flows offsite in four locations, based on his analysis of Lidar imaging of the site's topography. The green and pink dotted lines on Slide 2 of Exhibit 303 illustrate runoff "flow paths" following the topography and discharging from the site. All of this runoff eventually flows into Gibbons Creek, which discharges into the Steigerwald Refuge. His analysis is consistent with "[r]eports as recent as 2018 and all the way back to 1998 with the Pollution Control Hearing Board ruling and others for offsite discharge." (p 27 of hearing transcript, Exhibit 344).

i. Stormwater from the northwest corner of the site flows offsite to the west, directly into Gibbons Creek, which eventually flows into the Steigerwald Refuge. This is labeled "Location #1" in the figures in his report and identified by the pink line on Slide 2 of Exhibit 303.

ii. The westmost stormwater pond on the site, with the designation "TP1" on the applicant's preliminary stormwater plan, discharges into the ditch on the east side of SE 356th Avenue, which eventually discharges to Gibbons Creek and then into the Refuge. This is labeled "Location #2" in the figures in his report and identified by the green line on Slide 2 of Exhibit 303.

b. Gibbons Creek is a designated salmon spawning stream and ECY identified the stream as impaired for temperature, bacteria, and dissolved oxygen water quality standards. The Refuge is an environmentally sensitive area that provides habitat for plants and animals, including ESA listed salmonids.

c. Large amounts of sediment are visible in the long narrow pond in the southwestern portion of the site as shown in Exhibit 215 at 780/Fex. 82 Photo #53). This shows that runoff from the site is carrying large amounts of sediment. It also demonstrates that existing and proposed stormwater ponds on the site will quickly become clogged with sediment and will not allow stormwater to infiltrate into the ground. Stormwater runoff leaving the site carries high sediment loads, which will impact Gibbons Creek and the Refuge. The applicant did not provide any analysis of the impact of this sediment laden runoff on the Creek or the Refuge.

d. Sediment generated during mining operations will accumulate in the infiltration ponds and severely reduce the rate of infiltration on the site. As a result, the applicant's stormwater ponds are undersized by a factor of 40.

e. The applicant provided a post-mining/post-reclamation stormwater plan but did not provide an interim stormwater plan(s) demonstrating how stormwater will be accommodated during mining operations. In addition, the applicant did not model the effectiveness of the post-reclamation stormwater ponds.

f. Based on his analysis, the County's MDNS is based on inadequate information, as there is insufficient information in the record to evaluate stormwater impacts during mining. The site has numerous existing offsite discharge points and has discharged large amounts of sediment laden runoff into Gibbons Creek and the Refuge in the past. Absent a plan to accommodate stormwater runoff during mining operations, the proposed use is likely to result in significant adverse environmental impacts.

30. John Kivlen appeared in opposition to the proposed mine and summarized his written testimony, Exhibit 308. He argued that mining and reclamation activities on the site will have a range of direct and indirect environmental impacts. Roads, powerlines, and other infrastructure built to support the mine can cause habitat fragmentation and impact migratory animals. The haul road for the mine, SE 356th Avenue, is only 300 yards from two schools. An EIS is needed to fully evaluate the mine's adverse impact on the environment.

31. Don Steinke argued that the impacts of the proposed mine must be reviewed in an EIS with public hearings in order to protect the scenic and quality of life values in the County. "Scars" from the mine will be there for centuries. He noted that many people appeared at a hearing in Klickitat County to object to the scenic impact of solar farms.

32. Zeed Meyer, president of the Gorge Refuge Stewards, testified in opposition to the mine. The Gorge Refuge Stewards is a nonprofit that supports wildlife refuges in the Columbia River Gorge, including Steigerwald National Wildlife Refuge. He noted that the Steigerwald Refuge recently completed a \$25 million dollar restoration project, which included restoration of Gibbons Creek north of SR-14. Gibbons Creek now supports a variety of native fish species. Sediment laden runoff from mining operations on the site could impact the Creek and the Refuge. In addition, the U.S. Fish and Wildlife Service recently acquired 88-acres of old growth Oregon White Oak forest abutting the site.

33. Jeff Condon argued that mine truck traffic on SE 356th Avenue will create a hazard. The truck that lost its brakes and crashed into the railroad tracks could have struck one of his family's vehicles operating on SE 356th Avenue. Runoff from the site may impact groundwater wells used by residents in the area. Nutter Corporation has been attempting to buy residential properties in the area by posing as families moving to the area from out of state. The applicant should not be rewarded for ignoring the regulations and orders of the County and the Gorge Commission.

34. Catherine Morton, a steward of the Steigerwald Refuge, objected to the proposed mine and argued that an EIS is necessary to properly evaluate the impact of the proposed mine on Gibbons Creek and the Refuge. The applicant has been illegally mining the site on and off since the 1990s.

35. Marguerite Kelsey testified that she was unaware of the potential mine operation when she moved to Sunset Ridge the fall of 2021. She did not learn of this

application until she received a hearing notice at the end of 2022. Mining operations on the site will have a significant impact on the value of her property. She would not have purchased her home if she had known about this application. Washougal's population has increased from 3,400 in 1972 when the mine first began to operate to 17,000 today. Mining on the site will cause a variety of adverse environmental impacts. When the mine was operating illegally it was generating 350 truck trips per day, six days a week. Diesel exhaust from these trucks can have significant adverse impacts on human health as well as increasing ozone, smog, and acid rain. Trucks from this site will generate pollution equal to 52,500 cars a day.

36. Marissa Eaton agreed with the testimony of prior witnesses opposed to the mine. She was unaware of the mine application when she purchased her home in September 2021 and would not have purchased it if she had been aware of the mine. The applicant cannot be trusted to comply with conditions of approval, based on their prior illegal mining operations.

37. Nick Massie appeared on behalf of Rotschy, Inc. and the Southwest Washington Contractors Association's Advisory Council. He argued that mining is critical to growth in the County, as aggregate is needed to build roads, buildings, bridges, etc. As the population continues to increase, demand for these materials also increases. Without a local source of rock, companies must import it from other areas, which increases the cost of the material. Limiting the supply of aggregate could impact the economic growth of the region. It is feasible to mitigate the potential adverse environmental impacts of mining and reclaim the site after the aggregate source has been depleted.

38. Peter Cornelison testified that he has been a member of Friends of the Gorge for 18 years. He serviced "game cameras" that Friends installed on SE 356th Avenue, which allowed him to see the significant impact that mining activity had on local residents. The applicant had to rebuild SE 356th Avenue after heavy truck traffic from the mine damaged the road surface. The large volume of truck traffic generated by this use conflicts with and creates a hazard for existing residential and school uses in the area. The truck that crashed into the railroad could have struck an oil train, creating an enormous disaster. This use should be subject to an EIS.

39. Audrey Grice testified that her family moved to their property on SE 356th Avenue in January 2018. The mine began operating in the spring of that year, causing significant noise, dust, and other impacts from loaded gravel trucks traveling up and down the road. Trucks make it difficult to walk to the mailbox at SE Evergreen Highway. An EIS is warranted based on truck traffic, noise, and emissions alone. Mine trucks traveling through the roundabouts on SR 14 west of the site will create significant delays and congestion.

40. Samuel Grice testified that trucks from the site operate from 7:00 a.m. to 4:00 p.m. every weekday, generating significant noise from engines, brakes, and exhaust. The noise is clearly audible inside the nearby schools. 200 truck trips per day conflicts with

school bus traffic, causing congestion and delays. Truck traffic damages the roads, creating potholes. The trucks drop gravel on the roads and spew dust which coats everything on their property. Stormwater runoff flowing in the ditch on the east side of SE 356th Avenue has a white, creamy tint to it, which is likely sediment from the mine. This water flows into Gibbons Creek and Steigerwald Refuge.

41. Karen Streeter noted that her property is located on a hill above and to the north-northeast of the site. They can see into the mine and hear all of the activity happening there. She noted that she previously submitted a written declaration (Exhibit 206 at 22/Fex. 2). When the mine was operating noise from equipment, crushers, sorters, and vehicle back-up beepers was clearly audible throughout her 58-acre property, starting as early as 6:00 a.m. and continuing as late as 10:00 p.m. The only place it was not audible was in her basement. The noise was extremely loud and distracting, and it affected her family's mental health. Truck traffic is also a significant concern as stated by other witnesses. Water trucks filling up at the fire hydrant at the intersection of Sunset View Drive and Evergreen Highway blocked sight distance at the intersection, creating a hazard. There is no evidence the applicant or the County considered the mine's impact on the two schools located 0.1 mile west of the site. These schools serve between 850 and 1000 students. Gravel trucks conflict with school buses. Ten bus routes pass the intersection of SE 356th Avenue and Evergreen Highway every day. Many parents pass through this intersection as they drive children to school. The schools frequently host sports events after school and on weekends, which generate additional traffic in the area.

42. Ed Murrell noted that he previously submitted a written declaration (Exhibit 206 at 46/Fex. 2). He has a master's degree in fishery biology and 30 years of professional experience. He specialized in juvenile salmonids and Endangered Species Act issues. He argued that the applicant should be required prepare and file a detailed mitigation plan addressing mining operations, post-mining reclamation, and work stoppages. The mitigation plans must include completion schedules, penalties for delays, and requirements for County oversight and bonding to ensure funding for all proposed mitigation, including long-term oversight after the site has been reclaimed. There needs to be a drainage control plan for every phase of the mining operation. The Bonneville Power Administration ("BPA") set a precedent and low bar for when an EIS is needed when dealing with ESA species and critical habitat.

43. Ms. Dawson argued that conditions of approval A3, A5, B3, B4, C1, C2, and G2, are all required to appropriately address the impact of ongoing mining activities, and should be retained as is. The Code does not address issues with offsite dust other than the erosion control section, which deals with construction, not haul road operations. The County stormwater manual mostly deals with development rather than ongoing mining operations.

44. Mr. Howsely appeared on behalf of the applicant.

a. He noted that the public notice sign on the site fell over in a storm without the applicant's knowledge. However, this application has been the subject of

significant publicity sufficient to notify any potentially interested persons of the existence of the application and the opportunity to comment in writing or at the public hearings. The application was the subject of four public hearings with substantial public testimony. Opponents are well represented by counsel and in oral testimony and written comments from numerous individuals. The applicant will restore the sign the day after the hearing.

b. The roundabouts on SR 14 west of the site are designed to accommodate large trucks and trailers. The roundabouts are safer and allow smoother traffic flow than the prior intersection designs.

c. CCC 40.250.022.D(5)(d) prohibits the use of equipment with narrow-band (beeping) backup alarms. The applicant will use broadband backup alarms or strobes consistent with the requirements of the Mining Safety and Health Administration (“MSHA”).

d. The applicant will not withdraw groundwater on the site. The applicant proposed to extend public water to the site from the City of Washougal. The applicant agrees with the condition of approval proposed by the City of Washougal, requiring City approval of the water line. (Exhibit 47). He agreed to a condition of approval prohibiting groundwater withdrawal on the site for mining activities.

e. The GMA requires Counties to identify and protect aggregate resources, including adopting zoning and regulating adjacent land uses to limit interference with the extraction of aggregate resources. The GMA further requires that the County identify sufficient resources to accommodate a minimum 20 years of projected growth. There is significant need for gravel for use in construction of roads, schools, homes, and other development. As shown in Exhibit 175, the County had a 21-year supply of aggregate resources in 2018. That has now declined to a 16 year supply in 2023.

f. This mine, located closer to the major urban areas of the County, will reduce the cost of transporting gravel to construction sites, thereby reducing the cost of the material and the cost of development, including homes. Reducing transport distances also reduces the amount of diesel fumes and other impacts from mining truck traffic. SEPA is intended to balance the environmental impacts of a project with the benefits of the project. The mine will benefit the County by increasing the aggregate supply and providing a local source for such material.

g. Surrounding residents had adequate notice of potential mining operations on the site. The mine was originally created in 1972 as a source of rock for construction of SR-14. Current County zoning regulations, the Gorge Scenic Area Act, and the GMA were not in effect at that time. County planning documents and zoning have identified the rock resources on the site as a natural resource and potential mine site since 1972. All of the existing neighbors moved to the area after the sign began operating. Therefore, they had constructive notice of the mine.

h. Contrary to opponents assertions, mining is one of the most heavily regulated land uses in the state. Mining activities on the site are subject to County, Gorge Commission, state, and federal regulations. The applicant submitted, and the County is currently reviewing, site plan, conditional use, and Gorge permit applications to allow mining on the site. The use is also subject to SEPA review. The use is subject to the County's critical area, stormwater, public health, fire, and other regulations. In 1993 the Gorge Commission determined that expansion of this mine had no significant impact on the Gorge Scenic Area. Nothing has changed since that determination was made. Mining operations on the site are also regulated by DNR. ECY regulates stormwater runoff. ECY's SEPA comment acknowledged that the applicant is in compliance with its construction sand and gravel general permit. SWCAA regulates dust and other emissions generated by activities and equipment on the site. The Department of Motor Vehicles regulates noise emissions. The MSHA enforces safety standards within the mine. The Department of Revenue regulates the scale house to ensure that the appropriate fees are paid to the state for each truck leaving the site.

i. Recommended conditions of approval require the applicant to monitor groundwater levels in the on-site well and in three off-site wells.

j. The applicant will install a wheel and chassis wash system on the site to reduce dust generated by trucks leaving the site. The applicant also has water trucks to control dust on the site and on SE 356th Avenue.

k. This use will not generate heavy truck traffic on the section of SE Evergreen Highway west of SE 356th Avenue, except as needed to deliver rock to construction projects in and near the City of Washougal. Otherwise, all trucks will travel east to access SR-14 at SE Evergreen Boulevard.

l. This use will not discharge stormwater offsite. As demonstrated in the stormwater analysis, the applicant will collect and infiltrate all stormwater on the site.

m. The applicant has bonded the cost of reclamation of the site as required by DNR regulations and the plan and bond are updated annually based on DNR inspections of the site.

n. He agreed with the recommended conditions of approval in the Staff Report, with certain exceptions outlined in Exhibits 130 and 171. The applicant specifically objects to the trip cap in SEPA condition S-1.b.

45. At the conclusion of the hearing on March 1, 2023, the examiner held the record open for a total of six weeks, subject to the following schedule:

a. For two weeks, until March 15, 2023, for all parties to submit additional testimony and evidence;

b. For a second two week period, until March 29, 2023, for all parties to respond to whatever was submitted during the prior two-week period and for all non-SEPA appellants to submit final written arguments and for Friends to submit final arguments on substantive, non-SEPA, issues; and

c. For a third two week period, until April 12, 2023, for Friends to submit their final SEPA arguments and for the applicant to submit final arguments on any issues. The submittal of new evidence was prohibited during this final two week period.

D. RECORD ISSUES

1. Friends requested the examiner modify the record to “correct” Exhibit 210 and strike Exhibit 337. However, the examiner is uncomfortable modifying the record at this stage of the proceedings. Although the existing record is extensive, it allows for adequate review on appeal and the requested amendments are not necessary to facilitate that review.

a. Friends noted issues with the electronic copy of Exhibit 210, asserting that “[e]very page after page 172...[is] not viewable in most software as a result of file corruptions...” (Exhibit 425 at 28). However, the examiner had no issues opening and viewing the entire document, there is no evidence that the County had such issues, and Friends were eventually able to do so. If future reviewers have issues with this document, they can be addressed at that time through the same procedures that Friends used to view the document.

b. Friends requested the examiner strike Exhibit 337 from the record, as it contains duplicate copies of letters submitted by Friends. (Exhibit 425 at 36 and 404). Friends submitted a corrected version of Exhibit 337 (Exhibit 404, Attachment C at 7-334). The examiner is not willing to take the time to compare the two versions of this submittal to ensure that the corrected version is complete and contains all of the letters included in the original version. Retaining both versions of this submittal will not impact future review of this application on appeal.

E. FINDINGS

Vesting

1. There is a dispute regarding the regulations that apply to this application.

a. State vesting rules do not apply to applications for development in the National Scenic Area. (2020 Gorge Management Plan at 270). Therefore, the contingent vesting provisions of CCC 40.510.030.G.1 are inapplicable and this application did not vest on October 3, 2019, as the applicant asserts. (Exhibit 422 at 20).

b. CCC 40.240.050.H.1 provides “Any proposed use, development or structure shall be reviewed according to the standards in effect on the date an applicant

submitted a complete land use application to the reviewing agency.” There is a dispute about whether the application is complete. However, the examiner must determine what submittal requirements applied to the application in order to determine whether the application is complete. Therefore, the examiner will review the application for compliance with the submittal requirements that were in effect when the application was submitted to the County on February 10, 2020. (Attachment 2 of Exhibit 1).

c. CCC 40.240.285, which includes submittal requirements for proposed mining projects, was added to the County Code by Ordinance 2021-12-02, which was adopted on December 4, 2021, after this application was filed. Therefore, this application is subject to the “General Management Area Scenic Review Criteria” in former CCC 40.240.800, which was in effect on February 10, 2020, the date this application was submitted to the County.

Incomplete Application

2. The examiner finds that the application is incomplete, as it did not include all required application submittal items listed in former CCC 40.240.800. Ordinarily the examiner would find that failure to submit specific application documents constitutes a procedural error that only warrants denial of the application if the missing document prevents a finding of compliance with applicable approval criteria. However, in *Eagle Ridge the Gorge* Commission held that an incomplete application prevents meaningful opportunity for public review and comment and makes it impossible for the County to find the application complies with applicable approval criteria. *Friends of the Columbia Gorge v. Skamania Cnty.* (“*Eagle Ridge*”), CRGC No. COA-S-99-01 (June 22, 2001) (Fex. 47 at 6; Exhibit 206 at 782). CCC 40.240.050.H.1 prohibits review of incomplete applications.

a. Former CCC 40.240.800.A.6, which was in effect when this application was filed, required submittal of a reclamation plan.

i. The applicant attempted to submit such a plan on May 7, 2021 (Exhibit 419 at 2). However, the County did not receive or review the reclamation plan. (See Exhibit 120 at 10 and proposed condition A.12, requiring submittal of a reclamation plan to DNR with a copy to the County). In addition, the County did not include the reclamation plan in the record for public review. The reclamation plan was not included in the County’s record until April 12, 2023, submitted with the applicant’s final argument, after the record was closed to the public. (Exhibit 420). Therefore, neither the County nor the public had an adequate opportunity to review the reclamation plan. The DNR Surface Mining Reclamation Permit (Exhibit 161) is not a reclamation plan sufficient to comply with CCC 40.240.800.A.6.

ii. A reclamation plan is required to enable the County find that reclamation will “[r]estore the site to a natural appearance which blends with and emulates surrounding landforms to the maximum extent practicable” (former CCC 40.240.800.A.6.e) and to ensure reclamation will “[t]ake place without adversely

affecting the scenic, cultural, recreation and natural resources of the Scenic Area.” 16 U.S.C § 544d(d)(9).

iii. RCW 78.44.050 provides DNR exclusive authority to regulate reclamation of surface mines. However, this mine is located in the National Scenic Area and is therefore subject to federal law, the Scenic Area Act, that preempts contrary state laws. *Hillsborough Cnty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712, 105 S. Ct. 2371, 85 L.Ed.2d 714 (1985) (“It is a familiar and well-established principle that the Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that ‘interfere with, or are contrary to,’ federal law.”). This is consistent with CCC 40.240.010, which implements the Scenic Area Act and provides “If the provisions of this chapter differ from state law then the provisions of this chapter shall prevail.”

iv. Former CCC 40.240.800.A.6 requires a reclamation plan “For all new production and/or development of mineral resources and expansion of existing quarries...” The fact that former CCC 40.240.800.A.7 further requires that the reclamation plan “[b]e sent to the appropriate state reclamation permitting agency for review and comment” does not negate the requirement of former CCC 40.240.800.A.6 that a complete application include such a plan.

v. The examiner has no jurisdiction to address the applicant’s “[c]oncerns as to the legality of the Commission’s findings regarding whether a Washington county can condition approval of a development application.” (Exhibit 422 at 14-15). The Gorge Commission’s *Eagle Ridge* decision is binding precedent which the examiner is bound to follow.

b. The examiner finds that CCC 40.240.050.A.4.f(2)(a)(i), cited by Friends, does not require evidence of the topography of the site prior to the unpermitted mining that occurred on the site between 2017 and 2019. The plain language of this section requires an existing conditions plan showing “Topography...at two (2) foot contour intervals if available from a public source...” In this case, there is no evidence that the pre-2017 topography of the site is available from a public source. There are no other Code provisions requiring evidence of the conditions on the site prior to the unpermitted mining activity that occurred on the site between 2017 and 2019.

c. The examiner finds that CCC 40.240.050.A.4.g(2)(l) does not require drawings of existing and proposed stormwater facilities, as these are not “structures” as defined by the Code.¹⁰ The stormwater facilities are excavations (ponds, ditches, and swales). They are not “built up or composed of parts joined together.” CCC 40.240.050.A.4.g(2)(l).

d. The applicant did not propose any changes to the existing drainage ditch on SE 356th Avenue and the applicant will not discharge stormwater into this ditch except

¹⁰ CCC 40.100.070 provides “‘Structure’ means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

in the event of a storm in excess of a 100-year storm, which would likely constitute a regional disaster and result in significant runoff and flooding throughout the region. The examiner finds that the applicant cannot be required to plan for and accommodate runoff from such an event. Therefore, the examiner finds that the applicant was not required to include this ditch in the application.

i. The Zimmerlys signed a consent decree with the Gorge Commission in 1997 in which they agreed to seek after-the-fact approval of development within this ditch. (Exhibit 206 at 259, ¶ 10). Assuming the agreed upon approval was not obtained, the Gorge Commission can pursue enforcement action based on the terms of its consent decree. However, nothing in the Code or the consent decree require that they seek such approval as part of this application and failure to seek such approval does not make this application incomplete.

e. The original application did not include the signatures of all property owners or their authorized representative, as required by CCC 40.510.020.C.3.b. Specifically, the application was not signed by the owner of tax parcel 986031308. The fact that this parcel is not a separate “lot of record” is irrelevant. Parcel 986031308 was in separate ownership when the application was filed and neither that owner nor the owner’s representative signed the application.

i. At some point the applicant purchased parcel 986031308 and submitted a modified application to add parcel 986031308 to the application. (Exhibit 345). Although the modified application is dated February 10, 2020, it was submitted on March 15, 2023, after the final public hearing. (Exhibit 409 at 43).

ii. The applicant asserts that the plans in the record all include this parcel. However, that is not supported by the record. The applicant’s plans and technical reports show parcel 986031308 as part of parcel 13303400. (Exhibit 1, Attachment 7 at 2; Exhibit 1, Attachment 20 at 11-14; Exhibit 1, Attachment 12 at 11-16). The maps in the County GIS packet, and application submittals that include those maps, also clearly indicate that parcel 13303400 is not part of the site. (Exhibit 1, Attachment 5 and Exhibit 1, Attachment 11 at 9-10;). Although the site plans show the haul road, power conduit, and waterline extending across the southeast corner of parcel 13303400, that parcel is clearly outside the site boundaries indicated on these plans. (Exhibit 1, Attachment 7 at 3-5; Exhibit 1, Attachment 18).

iii. The examiner assumes, without deciding, that the fact that the owner of parcel 986031308 did not sign the original application did not limit the County or the public’s review of this application. The plans in the record show portions of the existing haul road, power conduit, and proposed waterline on this parcel and Friends raised this issue at the second public hearing on May 11, 2021, and no additional development is proposed on parcel 986031308. However, there is no need to rule on this issue as the application is otherwise incomplete as therefore must be denied as discussed above.

f. The examiner finds that the application complies with CCC 40.240.050.A.4.f(2)(a)(ii), which requires that the applicant's existing conditions plan include "Watercourses (streams, rivers, etc.) with thread of stream surveyed for all on-site watercourses." The applicant is not required to include the "seeps/springs" noted in Exhibit 356 at 9, as there is no evidence that these "seeps/springs" generate sufficient surface flow to create a defined channel or bed as required by the definition of "stream" in CCC 40.100.070.¹¹

g. The examiner cannot find that the application complies with CCC 40.240.050.A.4.1, which requires that the application include "A utility review from the public water purveyor, noting the ability to meet water pressure and fire flow requirements of the fire marshal or current evidence of the availability of suitable groundwater where [sic] water purveyor has determined public water or community water systems cannot be provided."

i. The applicant proposed to obtain water from the City of Washougal. (Exhibit 211). The site is within the City's Future Water Service Area as described in the 2017 Water System Plan. (Exhibit 47). However, the applicant has not submitted a utility review from the City confirming its ability to meet water pressure and fire flow requirements. To the contrary, the City notes that further review is required to determine whether it can provide water to the site. (*Id.*). The fact that the Fire Marshall did not raise any concerns with the availability of fire flows is irrelevant, as the Code clearly requires a utility review noting the ability to provide such flows.

ii. There is an existing groundwater well on the site which may be suitable for fire flow. However, there has been no determination that public water cannot be provided. Therefore, this portion of CCC 40.240.050.A.4.1 is inapplicable.

iii. The presence of onsite stormwater and retention ponds is not sufficient to fulfill this submittal requirement, which requires a utility review from the public water purveyor. In addition, there is no evidence that these ponds will hold sufficient water during the dry summer months or that the potentially sediment laden water can be used for fire flow without clogging or otherwise damaging firefighting equipment.

3. Because this application is incomplete, it must be denied, based on the Gorge Commission's *Eagle Ridge* decision and CCC 40.240.050.H.1. However, the examiner finds that it would be a waste of resources to not address the remaining issues raised in

¹¹ CCC 40.100.070 provides "'Stream' or 'streams' means those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. The channel or bed need not contain water year round. This definition is not meant to include irrigation ditches, canals, stormwater runoff devices or other entirely artificial watercourses unless they are used to convey streams naturally occurring prior to construction. Those topographic features that resemble streams but have no defined channels (i.e., swales) shall be considered streams when hydrologic and hydraulic analyses done pursuant to a development proposal predict formation of a defined channel after development.

this proceeding, as the above findings may be overturned on appeal. The following findings only apply in the event the examiner's decision that this application is incomplete is overturned on appeal.

Notice

4. The examiner finds that the applicant failed to comply with the posting requirement of CCC 40.510.030.E.3.c(1), which requires the applicant post a notice sign on the site “[a]t the midpoint along the site street frontage at a location five (5) feet inside the property line, or as otherwise directed by the responsible official to maximize visibility.”

a. In this case the applicant posted two notice signs on SE 356th Avenue prior to the initial public hearing on May 10, 2021. One sign was located roughly halfway between SE Evergreen Highway and the mine entrance and a second roughly 1,000 feet further north, near the mine entrance. (Exhibits 261 and 262). SE 356th Avenue is a private road owned by the applicant and therefore part of the site. The examiner finds that these signs were not posted in compliance with CCC 40.510.030.E.3.c(1), as they were well more than five feet inside the property line and did not “maximize visibility.”

i. At the conclusion of the hearing on May 27, 2021, the examiner continued the hearing, in part, to allow the applicant to correct this error by posting signs closer to SE Evergreen Highway. (Howsley testimony, Exhibit 348 at 2-3 and 211-212). However, the applicant did not relocate the signs. (Exhibits 261 and 262).

b. In addition, the applicant failed to comply with CCC 40.510.030.E.3.c(4), which requires the applicant “[m]aintain the sign board in good condition throughout the application review period, which shall extend through the time of the county examiner's decision on the proposal including the expiration of the applicable appeal period of the hearings examiner's decision if submitted.” This section further provides, “If the sign board is removed, county review of the land use application may be discontinued until the board is replaced and has remained in place for the required period of time.” Both signs had been removed as of January 27, 2022 and were not replaced until March 2, 2023, one day after the final hearing regarding this application. (Exhibits 261, 262, and 366).

5. Although the examiner is disappointed that the applicant failed to remedy these procedural errors by moving the signs closer to SE Evergreen Highway, maintaining the existing signs, and updating the signs to include notice of the March 1, 2023 hearing, the examiner finds that this procedural error did not impact the public's ability to participate in the hearings. Notice of the initial hearing was published in the newspaper, posted on the site, and mailed to the owners of properties within 300 feet of the site and other listed entities as required by CCC 40.510.030(E)(3). Multiple forms of notice are required, in part, to provide a measure of overlap so that if notice in one form is not effective, another form of notice will be effective. The neighborhood and other interested parties were well

represented at the hearing and in the written record. Numerous persons testified clearly and succinctly regarding issues of concern to them.

Zoning

6. Several witnesses argued that this application for surface mining should be denied because the site is located in the Columbia River Gorge Scenic Area. However, the Scenic Area act expressly allows mining in the scenic area, provided it does not adversely affect the scenic, cultural, recreation and natural resources of the scenic area. 16 U.S.C. § 544a(2) and 544d(d)(9). In addition, the state Growth Management Act, RCW 36.70A.040(3)(b), requires the County to designate mineral resource lands and to adopt development regulations to conserve those resource lands. Parcel 133044000, where the majority of aggregate extraction activities are proposed, is subject to the County's Surface Mining Overlay District. "The purpose of the surface mining overlay district is to ensure the continued availability of rock, stone, gravel, sand, earth and mineral products without disrupting or endangering adjacent land uses, while safeguarding life, property and the public welfare." CCC 40.250.022(A).

7. Several witnesses testified that they would not have purchased property in the area if they had known that surfacing mining could occur on the site. While the examiner sympathizes, due diligence research would have made it clear that mining on the site was possible, even likely. As noted above, the largest parcel of the site has been subject to the County surface mining overlay zone since at least 2014 when it was "re-designat[ed] an existing mine within the Gorge Scenic Area." (Exhibit 210 at 1572).¹² In addition, the site was previously subject to the Surface Mining Overlay as the County "redesignated" the site in 2014. Presumably the surface mining overlay zone was originally applied to the site in 1980, when the County "[a]ppplied a surface mining overlay zone (S-overlay) to virtually all existing mining operations and to parcels that owners or operators intended to mine," *J.L. Storedahl & Sons, Inc. v. Clark County*, 143 Wn. App. 920, 924, 180 P.3d 848, *review denied*, 164 Wn.2d 1031 (2008).

8. The Gorge Commission adopted amendments to the Management Plan for the Columbia River Gorge National Scenic Area on October 13, 2020. Those amendments modified the Glossary to define the "Exploration, development (extraction and excavation), and production of mineral resources" (mining) to include "the transportation of materials from the site." (Exhibit 193 at 477). The majority of SE 356th Avenue is located on land zoned GR-5, where mining, and therefore, the transportation of materials from the site, is prohibited. However, this application was submitted to the County on February 10, 2020, before the amended Management Plan was adopted. Therefore, this amendment is inapplicable in this proceeding. However, it will apply to any future application for mining on this site and could preclude a future proposal to use SE 356th Avenue as a haul road.

SEPA

¹² The examiner cites to the .pdf page of this Exhibit. The page number printed on the cited document is 001554.

9. The purpose of the SEPA process is to ensure consideration of environmental issues that are not addressed by the Code.

SEPA is a procedural statute designed to ensure that local governments consider the environmental and ecological effects of major actions to the fullest extent. SEPA's purpose is to provide decision makers with all relevant information about the potential environmental consequences of their actions and to provide a basis for a reasoned judgment that balances the benefits of a proposed project against its potential adverse effects.

City of Des Moines v. Puget Sound Reg'l Council, 108 Wn.App. 836, 849, 988 P.2d 27 (1999). An EIS is only required where the city determines that the proposed development will have a “[p]robable significant, adverse environmental impact.” RCW 43.21C.031(1).

10. In this case, the County issued a Mitigated Determination of Non-Significance (“MDNS”), concluding that the majority of the concerns raised by opponents of this application are addressed by the Code and other potential environmental and ecological effects were considered through the SEPA process and the MDNS.

11. The County’s SEPA determination is subject to review under the clearly erroneous standard. “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed.” *Wenatchee Sportsmen Ass’n v. Chelan County*, 114 Wash.2d 169, 176, 4 P.3d 126 (2000); *Preserve Our Islands v. Shorelines Hearings Board*, 133 Wn. App. 503, 539 (2006)). The examiner must accord the SEPA official’s determination “substantial weight.” (RCW 43.21C.090 and WAC 197-11-680(3)(a)(viii)). In this case, giving substantial weight to the County’s determination, the examiner finds that the County’s SEPA determination was clearly erroneous based on the findings below.

Noise

12. The examiner finds that the County’s SEPA determination failed to adequately consider noise impacts from the proposed mine, specifically noise from mine trucks operating on SE 356th Avenue.

a. Trucks traveling to and from the site are exempt from the noise standards in WAC 173-60-040, as they are motor vehicles regulated by WAC 173-62. WAC 173-60-050(4)(a). Vehicle backup warning alarms are exempt pursuant to WAC 173-60-050(4)(d), provided they are not operating continuously for more than five minutes. However, the County’s SEPA policy “encourage[s]” sources of noise that are otherwise exempt from WAC 173-60-040 but which may affect residential uses “be mitigated to the standards thereof as a Class B source of noise (i.e., fifty-seven (57) dBA)...” CCC 40.570.080.C.3.g. In addition, increases of more than five dBA over existing ambient noise levels may be considered significant. *Id.* Therefore, the SEPA

analysis must consider noise impacts on residential uses regardless of whether the noise source is exempt from WAC as such noise may cause significant adverse environmental impacts that must be considered.

b. WAC 173-60-020(6) provides “‘EDNA’ means the environmental designation for noise abatement, being an area or zone (environment) within which maximum permissible noise levels are established.” The site is a Class C EDNA. Residential properties surrounding the site are Class A EDNAs. (WAC 173-60-030).

c. WAC 173-60-040 sets maximum noise limits depending on the EDNA of the property generating the noise (the “noise source”) and the EDNA of the property where the noise is received (the “receiving property”). Noise limits must be met at the boundary of the receiving property. WAC 173-60-040(1).

d. WAC 173-60-040(2)(c) allows higher noise limits for specific periods of time.¹³ In this case, where the applicant is proposing an industrial use (a Class C EDNA) adjacent to residential properties (Class A EDNAs), WAC 173-60-040 imposes the following noise limits:

i. For Class C noise sources and Class A receiving properties:

60 dBA baseline

65 dBA for no more than 15 minutes in any one-hour period

70 dBA for no more than 5 minutes in any one-hour period

75 dBA for no more than 1.5 minutes in any one-hour period

ii. For Class B noise sources and Class A receiving properties [the standard “encouraged” by County SEPA policy CCC 40.570.080.C.3.g]:

57 dBA baseline

62 dBA for no more than 15 minutes in any one-hour period

67 dBA for no more than 5 minutes in any one-hour period

72 dBA for no more than 1.5 minutes in any one-hour period

e. In this case the applicant’s initial sound studies concluded that, without mitigation, noise generated by trucks operating on the private haul road, SE 356th Avenue, would exceed WAC standards at abutting residential properties. (Exhibits 80, 83, 86, 87, 89, and 92).¹⁴ The sound modeling in these studies relied on truck noise data measured from trucks operating at highway speeds. (Park testimony and Exhibit 245).

¹³ WAC 173-60-040(2)(c) provides

At any hour of the day or night the applicable noise limitations in (a) and (b) above may be exceeded for any receiving property by no more than:

(i) 5 dBA for a total of 15 minutes in any one-hour period; or

(ii) 10 dBA for a total of 5 minutes in any one-hour period; or

(iii) 15 dBA for a total of 1.5 minutes in any one-hour period.

¹⁴ The applicant’s initial sound study (Exhibit 1, Attachment 16) did not consider noise from trucks operating on the private haul road.

f. The applicant's final sound study concluded that the WAC noise standards can be met by limiting truck traffic to a maximum 14 trips per hour, prohibiting truck trips before 7:00 a.m. on weekdays and 8:00 p.m. on weekends, and through compliance with "calm driving protocols," requiring that gravel truck drivers "[a]dhere to the posted speed limit of 15 MPH for SE 356th Ave" and "[n]ot 'overrev' or cause other forms of excessive vehicle noise while traveling to and from the mine site." ¹⁵ (Park testimony and Exhibits 94, 138 at 27, and 288 at 3). The sound analysis in Exhibit 138 modeled truck noise based on data from a 2009 study in the Netherlands, which determined that trucks operating at lower speeds generate significantly less noise than trucks operating at highway speeds. (Exhibit 206 at 823/Fex. 49 and Exhibit 358).

g. The examiner accepts that the data in the Netherlands study is reliable for trucks operating under the conditions in that study. However, the examiner finds that the applicant failed to demonstrate that the Netherlands provides an accurate model of truck noise generated at the site.

i. There is no evidence that the conditions on the site are comparable to those in the Netherlands study.

(A) As Friends noted, the trucks observed in the Netherlands study were of a different style, smaller and lighter than the gravel trucks serving the proposed mine. The trucks and trailers in the Netherlands study were hauling goods within fully enclosed container trucks and trailers, whereas the mine trucks and trailers are hauling loose gravel in open beds. (Jenkins and Tilghman testimony and Exhibits 260 at 4; 409 at 90; 358 at 2, Figure 1; 206 at 56—29/Fex. 7 Attachment A; 275, and 207). The sound levels for moving trucks observed in the Netherlands study and used in the applicant's model are lower than the noise generated by idling mine trucks. (Jenkins testimony, citing a 1999 study by Pataki et. al.).

(B) The topography where trucks were operating in the Netherlands study was also different than the site. Trucks in the Netherlands study appear to operate on flat ground within a warehouse/distribution facility, where little acceleration or braking would be required. In this case mine trucks will be operating SE 356th Avenue which has a steeper grades, requiring more engine power for inbound trucks traveling uphill and more braking for loaded outbound trucks traveling downhill. (*Id.* and Park testimony). As Mr. Jenkins noted, a 1999 study by Pataki et. al. observed that noise generated by trucks operating on a ten-percent grade increased by six to eight dB compared to the same trucks operating on flat ground.

(C) At the hearing on May 10, 2020, Ms. Park conceded that "further research" is warranted to determine whether the vehicles and conditions reviewed in the Netherlands study are consistent with the vehicles and conditions on the site, as the grade of the haul road impacts truck noise "to some degree," trucks accelerating up a hill will generate "slightly higher" sound levels, and the 2009 study

¹⁵ The proposed "calm driving protocols" are also referred to as "safe driving protocols" in Exhibit 94.

reviewed trucks operating on a flat grade. (Park testimony). However, two years later, the applicant has not provided any further research or other evidence demonstrating that the conditions reviewed in the Netherlands study are consistent with the vehicles and conditions on the site.

(D) Friends' sound measurements of trucks operating on the haul road, taken well within the boundaries of residential properties abutting the haul road, also conflict with the Netherlands study. (Exhibits 207, 208, 216). The applicant argues that these trucks were not operating subject to the proposed calm/safe driving protocols. However, the vehicles appear to be moving at relatively slow speeds with little to no acceleration.

ii. The applicant could have confirmed the effectiveness of the proposed calm/safe driving protocols by measuring the noise generated by loaded gravel trucks operating on SE 356th Avenue under calm driving conditions.¹⁶ The applicant conducted sound measurements on the site in August 2020. The applicant drove trucks up and down SE 356th Avenue and measured the noise. However, the applicant did not utilize that data in the analysis or compare it to the Netherlands sound data. In addition, the trucks used during the applicant's on-site analysis were empty and did not include pup trailers. (Zachary Grice testimony and Exhibit 206 at 380/Fex. 16).

iii. Furthermore, the applicant failed to demonstrate how it would monitor and enforce compliance with the proposed calm/safe driving protocols. As noted in Ms. Parks' testimony and the Netherlands study, vehicle speed and driver behavior can have a significant impact on the amount of noise produced by trucks. (Exhibit 358 at 2 and 11).¹⁷ As Rachel Grice and Jody Akers testified, truck drivers rarely obeyed the existing 10 mph speed limit sign posted on SE 356th Avenue when the mine was operating without permits between 2017 and 2019. The applicant proposed to offer annual training on compliance with the protocols and install signage at the scale house exit. (Exhibits 94 and 138 at 27). However, the applicant failed to propose any means to monitor and enforce compliance with these protocols on a daily basis. In addition, the proposed protocols are very subjective and difficult to enforce, requiring that drivers "not 'overrev' or cause other forms of excessive vehicle noise while traveling to and from the mine site." (Exhibit 94).

h. The applicant's sound study and the Netherlands study did not consider noise from brakes and other descent control devices. As noted above, trucks observed in the Netherlands study appear to be operating on flat ground, where minimal braking is required. In addition, the Netherlands study assumed that the trucks observed in the study were "almost new." (Exhibit 358 at 2). As Mr. Jenkins noted, newer trucks are typically quieter than older trucks. (Jenkins testimony). Trucks operating on this site and serving other mines in the County appear to include a wide range of ages and conditions. (See

¹⁶ The applicant could not conduct mining operations on the site, but there is nothing to preclude the applicant from driving a loaded gravel truck on SE 356th Avenue to conduct sound measurements.

¹⁷ Where, as here, the document does not include page numbers the examiner references the page of the scanned .pdf document.

Exhibits 28, 76, 155, 206 at 330-338/Fex. 7 at 7-15, 207, 208, 216, 265, 266, 267, 275, 276, and 380). The Grices measured sound levels of 97 dBA as a truck with squealing brakes passed their residence. This measurement was taken well back from the Grices' property boundary. (Exhibits 206 at 17/Fex. 2 [Attachment A of Rachel Grice affidavit], and 359 at 22 and 25[p. 2 of Rachel Grice affidavit and attachment A]).

i. The applicant's sound analyses modeled truck sound 50 feet away from the truck (Exhibits 80, 83, 86, 87, 89, 92, 93, and 138). While this may be standard practice for sound analyses, SE 356th Avenue is not a standard road. It is a narrow private road where the vehicle travel lanes abut or even pass through the boundaries of adjacent residential properties. Therefore, sounds are being generated at the property line, not 50 feet away. Sound levels decline by six dB for every doubling of distance. (Jenkins testimony and Exhibit 215 at 531 and 534). Therefore, truck noise generated at the boundary of the receiving property is likely to be much louder than noise measured 50 feet away from the truck.

j. The applicant's sound study did not consider sounds generated by backup beepers from vehicles operating within the mine or the proposed use of a street sweeper water truck operating on SE 356th Avenue, which Rachel Grice described as generating an "obnoxious amount of noise." (Grice testimony and Exhibit 206 at 14/Fex. 2, p 2 Rachel Grice declaration). Mr. Howsley testified that the applicant will use broadband backup alarms or strobes. However, he failed to provide any evidence regarding the impacts of these devices.

k. The examiner further finds that the proposed mining operation is likely to increase ambient noise levels beyond five dBA in conflict with the County's SEPA policy at CCC 40.570.080.C.3.g.

i. The applicant's analysis concludes that this standard is met, based on their measured daytime ambient sound levels between 44 and 62 dB (overall 58) L_{eq} at the Akers property and 61 dB at the Grice property.^{18,19} (Exhibit 93 at 6 [Table 4-2]). Friends argues that sound generated by this use will exceed existing ambient sound levels by 14 dB, based on their measured median daytime ambient sound levels between 45 and 54 dB L_{25} (median 48 dB) at the Akers property and between 41 and 50 dB L_{25} (median 45 dB) at the Grice property (Exhibit 206 at 152/Fex. 5 at 4 [Table 1]).

ii. The applicant measured ambient sound levels over a 24 hour period at the boundaries of parcels 134134000 (the Akers residence) and 134212000 (the Grice residence) abutting 356th Avenue. (Exhibit 80 at 5). Activities were occurring at the mine during some portion of the applicant's ambient noise analysis. (Exhibit 80 at 7). Friends measured ambient sound levels over a 209 hour period at the Grice property boundary with SE 356th Avenue and over an 86 hour period at the boundaries of the

¹⁸ The parties also measured ambient sound levels at other locations, but the Akers and Grice properties are the only locations where the applicant and Friends both measured ambient sound levels, allowing for direct comparisons.

¹⁹ The "combined" sound levels are based on measurements with and without activities at the pit.

Akers property boundary with SE 356th Avenue. (Exhibit 206 at 152/Fex. 5 at 4). The examiner finds Friends' that ambient sound analysis is more persuasive, as it was conducted over a significantly longer period of time when no activities were occurring at the site.

iii. The applicant predicts that mining operations at the site will generate noise levels of 59 dB L_{eq} at the second story of the Akers residence and 58 dB L_{eq} at the Grice residence. (Exhibit 93 at 12 [Table 6-3]).

iv. Comparing Friends' measured median L_{25} ambient sound levels with the applicant's projected L_{eq} sound levels (with calm driving protocols), mining operations on the site will increase ambient sound levels by roughly nine dB at the Grice property and 12 dB at the Akers property, which is roughly double the five dB increase that the County SEPA policy provides "may be considered significant." (CCC 40.570.080.C.3.g).

(A) The examiner understands that L_{eq} and L_{25} sound levels are not directly comparable. However, they provide a sufficient proxy to assess the relative impact of mining activities on ambient noise levels. As Mr. Jenkins testified, Typical hourly L_{eq} and L_{25} levels differed between two and three decibels. So use of L_{eq} versus L_{25} would not alter his analysis or his conclusion that sound generated by the use will have a significant adverse impact due to increases over ambient noise levels.

1. As the applicant notes in Exhibit 91, CCC 40.250.022(D)(4) gives the County authority to establish higher noise levels through its SEPA analysis. However, the examiner finds that any increase in permitted noise levels should be addressed through the more intensive analysis required by the EIS process.

m. The examiner finds that the noise variance provisions of WAC 173-60-080, cited by the applicant in Exhibit 91, are inapplicable. This provision allows variances for limited time periods where "[i]mmediate compliance with such requirement cannot be achieved because of special circumstances rendering immediate compliance unreasonable..." WAC 173-60-080(1). Variances in excess of 30 days require public notice with opportunity to comment and a hearing "[w]hen substantial public interest is shown..." WAC 173-60-080(3). The sound levels proposed in this case are not proposed for limited time periods. The projected sound levels will continue as long as mining and restoration activities are occurring on the site.

n. Several neighbors noted that sound from mining operations was audible at their residences and the nearby schools. (Exhibits 26 and 217 and Samuel Grice testimony). However, the noise standards in the WAC and SEPA do not preclude any detectable increase in noise. These provisions only regulate noise that exceeds specified standards.

o. The noise regulations in CCC 9.14.010(3), cited in Exhibit 27A, are inapplicable. This standard only applies in “residential areas,” which CCC 9.14.015 defines as “all single-family residential, multifamily residential, and office residential uses as defined in Clark County Code Sections 40.210.010 to 40.220.020.” The site is not located in a “residential area” as defined by CCC 9.14.015. The site and surrounding properties are located in the Columbia River Gorge National Scenic Area District, subject to CCC 40.240.

p. The applicant proposed to prohibit truck traffic to the site prior to 7:00 a.m. in order to comply with the nighttime WAC noise standards. Ms. Akers testified that idling trucks often line up on the haul road in front of the access gate to the site at 6:30 a.m. when the applicant was conducting unpermitted mining activity on the site. If this application is approved, trucks should be prohibited from parking or operating on the haul road prior to 7:00 a.m.

q. Given the above, the examiner finds that noise generated by mining operations, including haul truck traffic on SE 356th Avenue, is likely to exceed the WAC standard as well as increase ambient noise levels in the area by more than five dB. Therefore, examiner finds that noise is likely to have a significant adverse impact on the environment and the County failed to adequately consider that impact.

Dust

13. The examiner finds that the County’s SEPA determination failed to adequately consider the impact of dust on the haul road (SE 356th Avenue).

a. As the applicant noted, the mine is subject to SWCAA regulations that are intended to limit dust impacts. (Howsley testimony; Exhibits 116 and 133). However, according to the applicant, the mine was subject to those regulations between 2017 and 2019 when the applicant was conducting unpermitted mining activity on the site. Based on neighbor’s testimony and photos, those regulations were ineffective at preventing dust impacts on 359th Avenue and adjacent properties. (Testimony: Jody Akers and Rachel Grice, Zachary Grice, and Samuel Grice oral testimony and Exhibits 11, 18, 28, 38, 58, 206 at 11/Fex. 2 [Akers declaration]; Photos: Exhibits 28 at 2, 58 at 3-6, 155 at 3, 206 at 339-340/Fex. 7 at 16-17, 206 at 357-358/Fex. 9, and 275) ²⁰

b. The County expressly did not consider the issue of off-site dust. Staff testified that “The Code does not address issues with offsite dust other than the erosion control section, which deals with construction, not haul road operations. The County stormwater manual mostly deals with development rather than ongoing operations.” (Dawson testimony). The County relies on SWCAA regulations to ensure dust control. However, as noted above, those regulations were not effective at controlling dust on the haul road. (Exhibit 120 at 6 [Land Use Findings 2.g and 2.i]).

c. The applicant proposed to implement a wash system to remove dust and sediment from the wheels and chassis of haul trucks before they leave the site. (Exhibits

²⁰ The examiner notes that the same photos are included in several different exhibits.

362, 366, and 414). This will likely reduce the amount of sediment and dust that is tracked onto SE 356th Avenue and SE Evergreen Highway. However, it will not control dust blowing off of the top of loaded gravel trucks. RCW 46.61.655(1) prohibits vehicles from depositing materials and requires that “[l]oad[s] of dirt, sand, or gravel susceptible to being dropped, spilled, leaked, or otherwise escaping therefrom shall be covered so as to prevent spillage.” But this provision only applies to public roads. SE 356th Avenue is a private road. In addition, the load covering requirement does not apply when “[s]ix inches of freeboard is maintained within the bed.” Exhibit 275 demonstrates that compliance with this provision does not prevent dust from blowing off the top of loaded gravel trucks operating on SE 356th Avenue.

d. The applicant proposed to use a sweeper and water truck to collect and control dust that accumulates on SE 356th Avenue. (Exhibits 366 and 414) However, neighbor’s testimony and photos demonstrate that the street sweeper was ineffective at controlling dust and merely caused the dust to become airborne. (Exhibits 28 at 2, 58 at 3-6, 206 at 339-340/Fex. 7 at 16-17, and 206 at 357-358/Fex. 9 at 1-2). Mr. Grice testified that the water truck directed sediment laden into his driveway. (Zachary Grice testimony). The applicant did not address these impacts.

e. Given the above, the examiner finds that dust generated by mine traffic on SE 356th Avenue is likely to have a significant adverse impact on the environment and the County failed to adequately consider that impact.

Traffic

14. The examiner finds that, with one exception discussed below, the County’s SEPA determination adequately considered the traffic impacts of the proposed mine.

a. Giving substantial weight to the determination of the public works director, the examiner finds that the scope of the traffic study is adequate to comply with CCC 40.350.020.D. Friends argued that fluctuations in demand for gravel could increase the volume of traffic generated by the mine. However, the trip limits imposed by the County will ensure that traffic volumes will not increase beyond what was considered in the traffic analysis.

i. CCC 40.250.022(E)(2)(i)(3) requires that proposed mine operations review “[e]xisting and proposed operational level of service at the site access and intersections along primary and secondary haul routes...” SR-14 is a primary haul route for this use. However, this provision does not require the applicant to review all intersections impacted by haul truck traffic generated by the mine. The analysis must end somewhere. The examiner finds that the scoping requirements of CCC 40.350.020.D are consistent with CCC 40.250.022(E)(2)(i)(3) and provide a reasonable scope of analysis for this use.

ii. Friends argued that the truck trip limit will cause mine trucks to queue on SE Evergreen Highway as they wait to enter the mine. (Exhibit 206 at 128/Fex.

4 at 10). However, queuing on a public roadway is illegal and can be addressed through enforcement.

iii. The SR 14 roundabouts are beyond the required scope of the traffic study. However, they are designed to accommodate the type of truck and trailer combinations serving the site. Although the roundabouts may force traffic to slow down, they allow for more efficient traffic movements as drivers are generally not required to stop and wait for a traffic signal to change.

iv. Mine traffic will not have a significant impact on the section of SE Evergreen Highway west of SE 356th Avenue. As proposed, all haul truck traffic will travel between SE 356th Avenue and SR -14 via the section of SE Evergreen Highway east of SE 356th Avenue. The use will generate a total of eight employee trips during the am and pm peak hours, some of which may travel on SE Evergreen Highway west of SE 356th Avenue. However, even if all employee trips arrived from west of the site traffic would not reach the minimum volume requiring analysis of this section of roadway. (CCC 40.350.020.D(7)).

v. Mr. Tilghman argued that the traffic analysis should have included likely haul routes other than the route between the site and westbound SR-14 unless the applicant is prohibited from serving customers to the north and east of the site or within the City of Washougal. (Tilghman testimony). This ignores that fact that development projects in those areas will require gravel from some source, which will generate gravel truck traffic on those roads whether or not this application is approved. Without this this mine trucks will have to travel further to bring rock to these projects.

b. The County adequately considered intersection sight distance at affected intersections. At the intersection of SE 356th/Evergreen Highway intersection more than 1,900 feet of sight distance is available to the east and 1,700 feet to the west. This is more than double the AASHTO standard for trucks, which requires a minimum 930 feet, and the WSDOT standard, which requires 845 feet. (Arguea testimony and Exhibit 368).

c. Traffic generated by the mine will increase congestion and delays in the area. However, all affected intersections are projected to continue operating at Level Of Service (“LOS”) B or better. (Exhibit 1, Attachment 17 at 5). Background traffic volumes on roads in the area may be higher during weekends and in the summer when tourist traffic in the Gorge increases. (Tilghman testimony and Exhibit 405). However, that additional volume is not sufficient to cause these intersections to fall below the County’s minimum LOS. Neighbors testified that they experience little or no delays at driveways and intersections in the area under existing conditions but mine trucks caused congestion and delays when the applicant was previously operating without permits. However, neither the Code nor SEPA prohibit delays; residents are not entitled to free flowing traffic. There is no evidence that such delays will be significant. As noted, all intersections within the study area are projected to operate at LOS B, with minimal delays. Driveways on SE 356th Avenue are likely to operate at similar LOS as driveways will be impacted by the same traffic that utilizes the SE 356th Avenue/Evergreen

Highway intersection. In addition, the traffic analysis is based on 340 truck trips per day. Trip limits proposed to comply with noise limits will restrict the use to a maximum 154 trucks per day, 186 fewer trucks than were assumed in the analysis, which will reduce the actual traffic impacts of the use.²¹

d. The County considered the need for an eastbound left turn on SR-14 at SE Evergreen Boulevard and concluded it was not required based on WSDOT's lack of comment. SR-14 is a state highway and WSDOT has exclusive jurisdiction to regulate this roadway. The County is permitted to rely on the expertise of other agencies with jurisdiction. There is no evidence that this intersection is hazardous.

i. Eastbound vehicles must stop in the travel lane as they wait to turn left onto SE Evergreen Boulevard. However, this section of SR-14 is relatively flat and straight, allowing oncoming eastbound vehicles to see and accommodate vehicles that are stopped waiting to turn left at this intersection.

ii. Friends noted that some drivers pull into the viewpoint turnout on the south shoulder of SR-14 in order to pass vehicles waiting to turn left. (Grice and Tilghman testimony and Exhibit 206 at 124/Fex. 4, Attachment B at 6). This is clearly unsafe and illegal. Reasonably prudent drivers will observe applicable traffic regulations and not undertake such hazardous maneuvers. Unfortunately, not all drivers are prudent. Some drivers do stupid things. (Exhibits 329-331). However, there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers or cause other drivers to undertake imprudent maneuvers. If necessary, WSDOT can address this issue by installing additional signage and barriers on the shoulder of SR-14 to limit this maneuver.

iii. An average of one crash per year was reported at this intersection, based on 12 years of WSDOT crash data, including periods when mining was occurring at the site. This is well below the County's action level of one crash per million entering vehicles and no significant crash patterns were identified based on those crash reports. (Arguea testimony and Exhibits 339 and 368). Therefore, the examiner cannot find that this intersection poses an unusual hazard.

e. Mine truck and trailer combinations will limit the vehicle storage capacity on SE Evergreen Boulevard. (Exhibits 76, 97, 206 at 351/Fex. 8, Photo 7, and 368 at 60-61 [Figures 7 and 8]). Mr. Tilghman argued that this will create a hazard as drivers following a mine truck may attempt to make a left turn onto SE Evergreen Boulevard, not realizing there is insufficient storage behind the mine truck, forcing the following vehicle to stop in the westbound lane of SR-14. (Exhibit 206 at 125-126/Fex. 4, Attachment B at 7-8). However, reasonably prudent drivers will not initiate a left turn onto SE Evergreen Boulevard until the vehicles in front of them have completed their turn. If this situation occurs, there is a wide gravel area on the east shoulder of SE Evergreen Boulevard which the following driver could utilize to move their vehicle out

²¹ Truck traffic is proposed between 7:00 a.m. and 6:00 p.m. The applicant proposed to limit the use to a maximum 14 trucks per hour, which equate to: 14 trucks/hour x 11 hours = 154 daily truck trips.

of the westbound travel lane of the highway, eliminating the immediate hazard. (Exhibit 206 at 126/Fex. 4, Exhibit B at 8). The SE Evergreen Boulevard/SE Evergreen Highway intersection is projected to operate at LOS B, which indicates that frequent gaps in eastbound traffic are available, reducing the incentive for drivers to undertake this unsafe maneuver.

f. Heavy truck traffic generated by this use will not create a significant hazard for pedestrians, cyclists, or school buses.

i. Gravel trucks operate on the same roads as other types of traffic - including pedestrians, cyclists, and school buses - throughout the County, hauling aggregate from mines and processing facilities to job sites throughout the region. Mines and quarries are generally located in the rural area, requiring haul trucks to operate on narrow country roads with little or no shoulder, similar to the roads in the area of the site. (See Exhibits 314 and 364). There is no evidence that such traffic creates a significant hazard.

ii. Local roads impacted by mine related trucks (SE 356th Avenue, SE Evergreen Highway, and SE Evergreen Boulevard) are straight with adequate visibility, so pedestrian, bicycle, and passenger vehicle traffic is clearly visible to trucks operating on these roads. (Exhibits 28 at 2; 48 at 7-9; 58 at 6; 76; 97 at 2; 155 at 3; 206 at 56-59/Fex. 2, Attachment A of Peter Cornelison declaration; 310; 332 at 4, 6, and 8; 343; and 359 at 46-49). The downhill grade on SE 356th Avenue may increase stopping distances for loaded trucks, but conflicting traffic will be visible, allowing trucks to slow down as needed to avoid other traffic on the roadway. Oncoming trucks are also obvious to pedestrians, cyclists, and other vehicles, allowing them to avoid conflicts when entering or crossing the roadway. Heavy truck traffic operating on the roadway may be uncomfortable for some users due to the size, noise, and proximity of such vehicles. But that does not make them hazardous.

iii. There is no evidence that mine traffic will pose a significant hazard to school buses. School buses serving the Jemtegaard and Columbia River Gorge schools operate on the section of SE Evergreen Highway that serves the site. (Exhibits 87 and 88). However, the existing travel lanes are wide enough to allow opposing vehicles, including buses and mine trucks, to pass without conflict. Buses stopping in the roadway to pick up or drop off students will have flashing lights and signs, making them obvious to oncoming traffic, which is required to stop. In addition, mine trucks on this section of SE Evergreen Highway are likely to be operating at limited speeds, as the short section road between the site and SE Evergreen Boulevard will limit trucks ability of to gain much speed before reaching the stop sign at SE Evergreen Boulevard. All affected intersections are stop controlled, which further limits the potential for conflicts at these locations. There is no evidence that mine trucks pose an unusual hazard for school buses.

g. Any increase in traffic volumes is likely to result in an increase in vehicular crashes. Mine trucks have been involved in crashes elsewhere in the region. (Exhibits 11-13; 265; 276; and 314). Denial of this application will not reduce, and may

increase, the number of such crashes as gravel trucks will continue to operate on roads throughout the County. If this application is denied, such trucks must travel further to obtain gravel supplies, increasing the risk of crashes. However, with one exception discussed below, there is no evidence that this use poses an unusual risk of crashes.

h. Nonetheless, the examiner finds that the alignment of the SE 356th Avenue/Evergreen Highway intersection and its proximity to the BNSF railroad tracks creates a unique situation that results in a potentially significant adverse impact.

i. On July 19, 2018, a loaded mine truck and trailer combination traveling southbound on SE 356th Avenue lost its brakes and crashed onto the BNSF railroad tracks south of SE Evergreen Highway. (Exhibit 206 at 363, 369, and 372/Fex. 11, 12, and 13). There was no train on the tracks when this incident occurred. However, this section of track carries roughly 40 trains per day. (Exhibits 206 at 371/Fex. 12 at 2; 155; 361). Trains frequently park on the siding and some trains may carry oil or other hazardous substances. (Exhibits 137; 155; and 206 at 367/Fex. 11 at 4).

ii. WAC 197-11-794 provides “An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.” The examiner finds that this is the exact type of situation anticipated by this rule. If a similar incident were to occur when a train carrying hazardous, flammable, or explosive substances was parked or operating on the track or siding, the impact could be catastrophic, especially given the proximity of this intersection to two schools. As Mr. Jardin noted, this single incident does not denote a crash trend. However, there is substantial evidence in the record of that gravel truck brakes and other equipment can and have failed here and elsewhere. (Exhibit 206 at 330-338/Fex. 7 at 7-14; 265; 266; and 267). Approval of this application will generate numerous loaded gravel trucks traveling downhill on SE 356th Avenue and through this intersection. Although the chance of any one of those trucks being unable to stop and crashing into a train is low, the impact would be severe. The County did not consider this issue. (Jardin testimony). Therefore, the examiner finds that the potential for loaded gravel trucks crashing onto the railroad tracks is a significant adverse environmental impact which the County must consider in an EIS.

iii. It may be feasible to mitigate this impact by installing concrete “K-rails,” cables, or some other type of barrier to stop trucks from reaching the railroad tracks in the event of an equipment failure. But is no evidence to that effect in the current record.

i. Given the findings above, the examiner finds that the County failed to adequately consider the potential significant adverse impact of mine trucks experiencing equipment failure and impacting trains south of the site. That issue must be addressed in an EIS.

Pavement damage

15. This use, like any other use in the area, will generate additional traffic on area roads, which will increase the wear and tear and need for maintenance of those roads.

Due to their heavy weight, trucks serving this use will cause greater damage to the roadway compared to passenger vehicles. Condition A-2.d requires the applicant mitigate this impact by constructing “[a] structural overlay with a 15-year life serviceability on SE Evergreen Highway from the City of Washougal city limits to State Route 14” or pay an annual fee for the maintenance of this section of road. (Finding 26 and Condition A-2.d of the Staff Report, Exhibit 120). The examiner finds that this condition is sufficient to address the impact of this use on the County roadways most impacted by this use.

a. Friends argue that the structural capacity analysis underestimates the impact of this use by 15-percent because it does not include haul trucks operating on Saturdays and it fails to consider inbound truck carrying fill dirt to the mine for purposes of reclamation. (Exhibit 206 at 127-128/Fex. 4 at 9-10). CCC 40.250.022.D(10) authorizes the public works director to require pavement wear agreements for public roads used to access the site. The examiner finds that the public works director is in the best position to determine whether, and to what extent, pavement wear mitigation is required. Giving substantial weight to the County’s determination, the examiner cannot find that this use, as regulated by proposed Condition A-2.d, will result in a likely a significant adverse impact. As Hearing Examiner Forester put it “Road maintenance is the County’s responsibility and the County has made a policy decision and a technical decision that apparently satisfies their perceived financial interest in being compensated for some portion of the required work.” (Exhibit 364 at 49).

b. If this application were approved, Condition A-2.d should be modified to limit the maintenance requirement to the section of SE Evergreen Highway between SE 356th Avenue and SR-14, as this use will not generate truck traffic on the section of SR-14 west of the site, between SE 356th Avenue and the City of Washougal.

16. The road maintenance requirement of Condition A-2.d does not apply to SE 356th Avenue, as it is a private road owned by the applicant. Maintenance of this private roadway is subject to the terms of the easement agreement for the roadway. However, it is in the applicant’s interest to maintain this road in order to accommodate vehicles traveling to and from the mine.

17. Haul trucks may cut the corners at intersections, damaging the pavement on the shoulder of the roads.

a. The applicant’s truck turning movement schematics appear to show that the trailers of inbound trucks will cut the corner at SE 356th Avenue/SE Evergreen Highway, leaving the paved surface. (Exhibit 1, Attachment 12 at 11 [Figure 6]).

b. In addition, trailers on outbound trucks may cut the corner at SE Evergreen Boulevard/SR-14. (Exhibit 1, Attachment 12 at 12-13 [Figures 7 and 8]). Figure 7 illustrates a vehicle turning from SE Evergreen Highway onto SE Evergreen Boulevard, showing the right wheels of the trailer over the fog line when the front of the vehicle is at the stop bar of the Evergreen Boulevard/SR-14 intersection. Figure 8 illustrates a vehicle turning from SE Evergreen Boulevard onto SR-14 with the front of

the vehicle in the same location as shown in Figure 7, with the front of the vehicle at the stop bar of the Evergreen Boulevard/SR-14 intersection. However, the trailer is now aligned with the vehicle. The applicant did not provide a continuous turning schematic demonstrating how this alignment can occur as vehicles maneuver from SE Evergreen Highway onto SR-14. The trailer of a vehicle turning onto SR-14 from the alignment shown in Figure 7 would be likely to cut the corner at SE Evergreen Highway and SR-14.

c. Outbound vehicles at 356th Avenue and Evergreen Highway will not impact the pavement shoulder or the mailboxes on the south side of Evergreen Highway. There is an area of widened pavement on the south shoulder of Evergreen Highway to accommodate this turning movement. The applicant's turning movement schematics show that outbound vehicles can utilize this wider pavement to complete this turn without impacting the mailboxes. (Exhibit 1, Attachment 12 at 11 [Figure 6]). Haul trucks were making this turn for several years without impact while the mine was operating without permits.

d. If this application were approved the off-tracking issues noted above could be addressed with conditions requiring the applicant to provide revised turning movement schematics demonstrating that such impacts will not occur, additional pavement to accommodate vehicle turning movements, or an agreement to monitor and repair the pavement at these locations.

Diesel pollution

18. There is no dispute that diesel powered haul trucks which transport aggregate between mines and job sites generate pollutants including diesel exhaust, oil, dust, etc. and those pollutants can impact air and water quality, wildlife, and human health. However, all diesel vehicles, including trucks carrying aggregate from other mine sites, generate such impacts. There is no evidence that trucks serving this mine generate greater volumes of pollutants or pose a unique hazard to the environment. Denial of this application will not eliminate aggregate trucks from the environment. Aggregate consumers will simply obtain it from other sources, which may be further away, thereby increasing the truck travel distance and the volume of pollutants generated.

Impacts to Schools

19. The examiner finds that this use will not have a significant adverse impact on the nearby schools - Jemtegaard Middle School and Columbia River Gorge Elementary School - if the applicant can mitigate the noise and dust impacts noted above. These schools are located less than 500 feet from the haul road, SE 356th Avenue. However, they are considerably further away from the haul road and the mine site than the residential properties on SE 356th Avenue. Therefore, if noise and dust from the mine operation can be mitigated to non-significant levels for these nearby uses, the operation will not have such significant impacts on the schools.

Stormwater

20. The hearings officer finds that, with the exception of runoff from the haul road, the County adequately considered the potential adverse environmental impacts of

stormwater from this use and, giving substantial weight to the County's SEPA determination, finds that stormwater from this use will not cause significant adverse environmental impacts. This is a close call, as there is considerable evidence in the record from experts on both sides. (From the applicant, Exhibits 1, Attachment 13; 113; 356; 357; 413; 415; and Hedberg and Staley testimony), (From Friends Exhibits 264, Attachment B; 215 at 727/Fex. 82, 264; 303; 376; and 407; and Roseen testimony), and (From the County Exhibit 120 at 22-23 and Dawson testimony). However, the examiner finds the testimony from the applicant's engineers to be more persuasive, as it is based on on-site reviews and knowledge of existing facilities and mining operations. County engineering staff reviewed and accepted the applicant's analysis. Dr. Roseen's testimony is based on reviews of LIDAR mapping and photos rather than on-site inspections. Although Mr. Hedberg did not visit the site prior to his initial analysis, other members of the applicant's team did so and Mr. Hedberg visited the site to confirm his findings during the course of review of this application. (Hedberg testimony and Exhibit 415).

a. Friends repeatedly cites to stormwater system failures that occurred on the site in 1996 and 1997. There is no dispute that those events caused significant environmental damage by discharging sediment into Gibbons Creek and the Steigerwald Refuge. However, those events are not relevant to review of this application. The applicant substantially modified and upgraded the stormwater systems on the site after that event. Dr. Roseen's assertion that the existing stormwater system is "known and well documented..." to discharge off-site (Exhibit 264, Attachment B at 2 and 3) is unsupported by any evidence.

b. The applicant's stormwater system is designed to collect, treat, and infiltrate all stormwater runoff from the 100-year storm event on the site. No stormwater will be discharged offsite during a 100-year storm event. The site is incised from surrounding areas, which directs runoff to the interior of the site. All stormwater is collected and directed to holding areas prior to infiltration within the pit. Runoff from the western half of the site discharges to infiltration ponds constructed in 1997, in response to the 1996 stormwater overflow event. Runoff from the east side of the site is directed to settling basins for reuse in the gravel washing process. The applicant can accommodate additional runoff from events in excess of the 100-year storm by pumping water from the lowest-elevation infiltration pond back to the mine floor for storage and additional infiltration. The "closed depression" in the eastern portion of the site can accommodate 62-percent of the site runoff generated by a 100-year storm, providing additional stormwater capacity in addition to the 100-year storm capacity of on-site the stormwater system. (Hedberg and Staley testimony and Exhibits 1, Attachment 13; 81, 82, 356, 413, 415).

i. The applicant argues that its analysis is conservative, ECY only requires the applicant to accommodate runoff from a 10-year storm event and the County requires a 25-year storm. However, the 1997 Gorge Commission Consent Decree prohibits any surface runoff discharge from the site into Gibbons Creek. (Exhibit 206 at

259/Fex. 6, Attachment J of Attachment B at 6).²² The applicant's stormwater facilities are consistent with the Consent Decree.

c. Friends notes the applicant modeled the stormwater system on the site as single pond, rather than the actual system with multiple ponds connected by pipes and ditches (Exhibit 376 at 7 and 407 at 11). However, in the examiner's experience, this is a common engineering practice. The fact that the modeling as a single pond simplifies the analysis does not render that analysis inaccurate. In addition, the model provides a conservative estimate of the actual stormwater facilities on the site. As Mr. Hedberg noted, the applicant's model assumes less capacity than is actually available, as the on-site ponds are nearly twice as deep as was assumed in the applicant's model. (Exhibit 413 at 2-3)

d. Friends argues that sediment from mining operations on the site will clog the infiltration ponds and limit or preclude infiltration, leading to flooding and off-site discharges. (Exhibit 264 at 20). Dr. Roseen cites to the evidence of standing water in the ponds in the eastern portion of the site as evidence of such clogging. (Exhibit 215 at 727/Fex. 82, and Roseen testimony). There is no dispute that mining activities generate sediment that can limit or preclude infiltration. However, the applicant's ECY General Permit requires that they monitor and maintain the stormwater system, removing accumulated sediments as necessary to preserve adequate infiltration rates. Unlike standard infiltration facilities in the urban area, this site is underlain by gravel that allows rapid infiltration. As sediment accumulates, the applicant can use the on-site excavation equipment to scrape the bottom of the pond to remove accumulated sediment and expose a new layer of gravel, restoring the infiltration capacity of the system. (Exhibit 356 at 5). The ponds with standing water noted by Dr. Roseen are not infiltration facilities. They are settling ponds in which the applicant recycles wash water from the aggregate processing facilities, allowing sediments to settle out before the water is reused. When the mine is operating the operator periodically clears the accumulated silt. However, no mining activity has occurred on the site since 2019 and sediment has accumulated, resulting in standing water within the pond. There is no connection between the wash ponds on the east and the infiltration ponds in the west portions of the site. (Staley testimony and Exhibit 356 at 5 and 11).

e. Friends disputes the infiltration rate used in the applicant's stormwater model, citing to the infiltration rates for the on-site soil types listed in the Natural Resource Conservation Service ("NRCS") soils survey. (Exhibit 264 at 21). However, the NRCS soils data applies to surface soils, which the applicant must remove to access the underlying gravel layers. During mining operations all stormwater infiltration will occur within the gravel layer, which has a much higher infiltration rate than the surface soils. (Exhibit 356 at 6-7 and 13).

f. Friends assert, based on "high resolution digital elevation model (DEM)," data that runoff will discharge from the site at four locations and flow into

²² Fex. 6 is Mr. Weiler's submittal. Attachment B of Fex. 6 is Mr. Weiler's report. The Gorge Commission's Consent Decree is Attachment J of Fex. 6 is Mr. Weiler's report.

Gibbons Creek to the west of the site, the ditch on SE 356th Avenue, and the Washougal Oaks/Steigerwald Lake Refuge. (Exhibit 264 at 22 and 26-32/Fex. 82, Attachment B at 5 and 9-15; Exhibit 303 and Roseen testimony). However, the applicant submitted photographs of the conditions on the site, demonstrating that the actual topography of the site precludes stormwater discharges at these locations. (Exhibit 356 at 7-10 and Attachment B). The last stormwater pond on the site has an emergency outlet that discharges to the ditch on SE 356th Avenue. However, Mr. Staley testified that the bottom of the pond is roughly 15 feet below this outlet and stormwater will not leave the site except during events well in excess of the 100-year storm. As the applicant notes, such a storm event “[w]ould constitute a regional disaster.” (Staley testimony and Exhibit 356 at 9-10 and 27, photograph B-1-05). The applicant cannot be required to design for and accommodate such a disaster level event.

g. Friends provided photos and testimony of turbid water flowing in the ditch on the east side of SE 356th Avenue and assert that this is evidence of sediment laden runoff leaving the site. (Rachel and Samuel Grice testimony and Exhibits 206 at 11 and 15/Fex. 2, Jody Akers declaration at 3 and Rachel Grice declaration at 3; 262 at 6; 332 at 3 and 7; and 334). However, the applicant demonstrated that water flowing in this ditch does not come from the site.

i. Runoff near the gate to the mine entrance, shown in Exhibits 262 at 6 at 332 at 3, flows into a catch basin that discharges to the adjacent infiltration pond. (Exhibit 356 at 8 and 32, photograph B-1-10).

ii. Runoff in the ditch comes from off-site seeps and springs south of the site. This is confirmed by the applicant’s video, showing there is little or no runoff on the northern portion of the ditch, near the mine. The runoff volume and rate is much higher in the southern portion of the site. (Exhibit 356 at 9 and 357).

iii. The applicant’s consultant determined that the runoff observed in the ditch is from offsite “seeps/springs” that “[e]merge from the hillside south of the site boundary...” (Exhibit 356 at 9). Friends consultant argues that “[m]ost if not all of the seeps and springs are located on parcel number 134202000... *inside* the site boundary.” (Exhibit 356, Attachment A at 3. *Italics in original*). However, Friends failed to provide any support for this assertion and there is no evidence Friends’ consultant entered the site to confirm this statement.

h. The examiner finds that it is feasible to modify the on-site stormwater facilities as mining progresses. The applicant is not required to provide detailed engineering designs for such alterations at this stage of review. The purpose of this preliminary review is to determine whether it is feasible to comply with applicable approval criteria. Future stormwater plans are conceptual and may change based on actual mining activity and subsurface conditions discovered on the site. Analysis of all technical details is not required at this stage. To require complete, detailed plans for all phases of mining operations would require re-working the entire design any time amendments or modifications of the project are required. This would be highly inefficient

and is not necessary to protect the public interest. ECY's review of future modifications to the stormwater facilities provides adequate protection of the public interest. The applicant provided a post-reclamation stormwater plan as required by the application submittal requirements. (Exhibit 1, Attachment 13 at 16).

i. The applicant did not provide stormwater calculations or treatment facilities for runoff from the access road, SE 356th Avenue. This is required by CCC 40.250.022.E.2.g. SE 356th Avenue is an existing roadway. This development will not increase the volume of stormwater runoff flowing off of this road. But it will increase the amount of sediment deposited on the road and the wash truck proposed to control dust on the road will also increase the volume of runoff and sediment discharged into the ditch. The applicant failed to provide any means to deal with this issue and the County expressly did not consider it in its SEPA analysis. (Dawson testimony). It is possible the existing vegetation in the ditch is sufficient to filter this sediment, but there is no evidence to that effect as this issue was not considered. This issue could be addressed with a condition if this application is approved.

Fish and Wildlife habitat

21. There are a number habitat areas on and near site, including Gibbons Creek and an associated biodiversity area and corridor located to the north and west of the site, the Washougal Oaks portion of the Steigerwald Refuge abutting the south boundary of the site, and the remainder of the Refuge on the south side of SR-14. Portions of Gibbons Creek are located on the site; the creek enters the site at the northeastern boundary and exits at the central portion of the northern boundary. (Exhibit 1, Attachment 5 at 15). In addition, the site contains Oregon White Oak trees, an existing snag, and a wetland, all of which are protected habitat. (Exhibits 1, Attachments 5 and 20; 134; 206 at 170, 180, 182, and 184/Fex. Exhibit 6, Attachment B and Attachments A, B, and C of Attachment B; 350; 351; 365);

Gibbons Creek

a. Gibbons Creek provides critical habitat for a variety of endangered fish species. (Exhibits 1, Attachment 20; 206 at 172/Fex. Exhibit 6, Attachment B at 6; 378; and 408). Gibbons Creek is located 250 feet away from nearest boundary of the extraction area, in excess of the minimum 200-foot stream buffer required by CCC 40.440.010-C(1)(a). The creek is further separated by the required 30-foot wide Vegetated Screen Buffer surrounding the extraction area and it is topographically removed from the mine by an incised ravine. (Exhibit 134).

i. Sediment laden runoff was discharged from the site into Gibbons Creek, the ditch on 356th Avenue, and the Refuge in 1996/97. Those discharges had a significant adverse impact on fish and fish habitat. If similar discharges were to occur in the future, they would also have a significant adverse impact on endangered fish. (Exhibits 206 at 166/Fex. Exhibit 6, Attachment B; 378; and 408).

ii. However, as discussed above, the applicant modified the stormwater facilities on the site after the incident in 1996/97. Those modifications will

ensure that all runoff from storms greater than a 100-year event will be contained and infiltrated on the site. There will be no future offsite discharges of sediment laden waters, provided the applicant addresses treatment of runoff from SE 356th Avenue. Therefore, the examiner finds that stormwater runoff from the site will not have a significant adverse impact on fish and wildlife habitat or other critical areas.

iii. The fact that the applicant's critical areas studies failed to note all of the ESA-listed fish for which Gibbons Creek provides critical habitat does not impact the applicant's analysis. The proposed development will not impact Gibbons Creek. Therefore, it will not result in impacts to habitat for listed fish species or result in a "take" of any protected species that are or may be present in the Creek.

iv. The parties dispute whether the ditch on SE 356th Avenue connects to Gibbons Creek. (See Roseen and Weiler testimony and Exhibits 356, 378, 407, and 412). However, the examiner finds that there is no need to resolve this dispute as CCC 40.250.022.E.2.g requires the applicant to treat runoff from SE 356th Avenue, which is the only source of runoff from the site that will enter the ditch. Assuming the ditch is connected to Gibbons Creek, treatment of this runoff will ensure that this use will not have a significant adverse impact on the creek due to runoff from this ditch.

Oregon White Oak trees

b. There are ten Oregon White Oak trees on the site, located along the southern border of the study area boundary, within the vegetative screen buffer. There are additional oak trees on properties to the south of the site, the Upland Oaks section of the Steigerwald Refuge. WDFW identifies Oregon White Oak trees as priority habitat and species that must be protected pursuant to CCC 40.440. The on-site oak trees are separated from the mine site by a five-foot high and 20-foot wide berm. No mining is proposed south of the berm. (Exhibits 115 at 2; 134 at 9-10, 15, and 20; 365 at 9, 15, and 23). County staff visited the site, confirmed the location of the oak trees, and determined that, as conditioned, the mine will not impact these trees. (Exhibit 115). There is no substantial evidence in the record contradicting this determination. Contrary to Friends' assertion, WDFW did not "[e]xpress[] significant concerns about mining impacts to the Oregon White Oak woodlands. (Exhibit 409 at 68). WDFW merely stated that it "[d]oes not support impacts to the Gibbons Creek Riparian Corridor or Oregon white oaks that are on the property to meet mining objectives." (Exhibit 244).

c. The fact that the County and the applicant failed to acknowledge that the Upland Oaks section of the Steigerwald Refuge abuts the south boundary of the site, and the applicant asserts that it does not (Exhibit 350), is irrelevant. The County considered potential impacts to this abutting property and its oak habitat and concluded it will be protected from significant adverse impacts as discussed below. The ownership/management of the property does not affect the analysis.

Wetlands

d. There is one 0.09-acre depressional wetland (Wetland A) in the southeastern corner of the site. This wetland is situated on a ridge within the 30-foot-wide

vegetation screen buffer, approximately 70 feet above the mine floor and 50 feet east of the extraction boundary. The wetland was artificially created, excavated from a non-wetland site for use as a farm pond. (Exhibits 134 at 7 and 15; 365 at 5 and 15). Although Wetland A is exempt from County regulations as an artificially created wetland, it is subject to the NSA regulations, which require a 75-foot buffer around this wetland. CCC 40.240.840.H.5.a. This wetland is separated from the active mine site by topography and vegetation. However, the existing 50-foot setback is inadequate to meet the buffer requirements of the Code. The applicant could modify the mine site to expand this buffer and mitigate for the impact of any prior unpermitted mining activities that may have occurred within the wetland buffer or obtain approval of a reduced buffer if allowed by the applicable regulations. This should be required as a condition if this application is approved.

Snag

e. The applicant proposed to remove a 27.5-inch diameter snag that meets the definition of priority habitat. The applicant proposed to mitigate for removal of the snag by girdling a similar size Douglas fir within the onsite portion of the oak woodland and placing the cut snag within the buffer of Gibbons Creek to serve as large woody material. The existing snag is located in a previously mined portion of the site where all of the surrounding vegetation has been cleared. The proposed snag will be located within the oak woodland, surrounded by other trees that will enhance the habitat value of the snag. (Exhibits 115 at 2; 134 at 8-9 and 21; 365 at 7 and 24). The County considered this impact and concluded that, as mitigated, it will not result in a significant adverse impact. Friends argue that the proposed mitigation is inadequate. (Exhibit 409 at 75). However, they failed to provide any substantial evidence to support that assertion or rebut the County's SEPA determination on this issue.

Groundwater

22. The County considered the mine's potential impacts to groundwater and determined that it will not result in significant adverse impacts. Friends failed to sustain their burden of proof that the County's determination was incorrect.

a. No ground water use is proposed on the site. The applicant will utilize public water provided by the City of Washougal. (Howsley testimony). A condition of approval should be imposed to that effect if this application is approved.

b. Mining operations will not intrude into groundwater. The maximum depth of mining will more than 100 feet above the groundwater elevations on the site. (Hedberg testimony and Exhibit 1, Attachment 19 at 5). The applicant will collect, treat, and infiltrate all stormwater falling on the site. (Exhibits 1, Attachment 13; 113; and Hedberg testimony). The applicant will monitor groundwater in three offsite wells to ensure no adverse impacts occur. (Exhibit 1, Attachment 8 at 17).

i. Sean Streeter testified that the applicant dug a basin on the site in 2018 which immediately filled with groundwater and has remained full ever since. (Sean Street testimony and Exhibit 155 at 3-4). However, there is no evidence that the water in

the basin is from groundwater within the aquifer. The water may have resulted from perched groundwater, which the applicant observed to accumulated between a gravel layer and an underlying sand layer, resulting in groundwater seepage visible on the exposed pit face. (Exhibit 84 at 14). Based on well logs in the record, the maximum groundwater aquifer elevation is well below the current and proposed lowest depth of the mine floor.

c. The applicant will not use or store chemicals or fuel on the site that could contaminate groundwater. All fuel will be transported to the site and discharged directly into the fuel tanks of vehicles and equipment used on the site. The applicant can prepare and implement a spill prevention and response plan to mitigate any potential fuel spills that may occur. The applicant is required to monitor the stormwater ponds daily for oil sheen and address it if it occurs. (Hedberg testimony and Exhibits 1, Attachment 8 at 17 and 160).

Visible from KVAs

23. The majority of the site is topographically visible from the following Key Viewing Areas (“KVAs”): the Columbia River, SR-14, I-84, the Historic Columbia River Highway, the Sandy River, Portland Women’s Forum State Park, and Larch Mountain Road. (Exhibits 403 at 2 and 120 at 11). “Topographically visible” means that while there may be intervening vegetation, there are no intervening landforms between the site and the KVA. Therefore, the applicant is required to demonstrate that the mine is “visually subordinate to its setting as seen from key viewing areas.” (Former CCC 40.240.800.B).

a. The Gorge Commission determined through its 1993 scenic area approval of the mine that the mine would be visually subordinate if the applicant created and planted the required berm. (Exhibit 1, Attachment 8 at 5). The applicant did so. The berm remains in place and the planted trees have since matured and screen views of the mine, making it visually subordinate when viewed from the KVAs. (Exhibit 120 at 11). Therefore, the examiner finds that the mine will remain visually subordinate. The applicant proposed to locate the primary processing area, stockpiles, and mining equipment in areas of the site where they are fully screened and visually subordinate to KVAs. (Exhibit 1, Attachment 8 at 5). In addition, ongoing mining activities on the site will continually lower the pit floor, increasing the topographic screening of mine operations. Therefore, the examiner finds that this development will not result in significant adverse visual or scenic impacts, provided it is conditioned to require that the applicant locate the primary processing area, stockpiles, and mining equipment in areas of the site where they are fully screened and visually subordinate to KVAs.

Enforcement

24. Conditions of approval are necessary to ensure that the mine will not cause significant adverse environmental impacts, i.e., compliance with noise limits; limitations on the number of truck trips, compliance with speed limits, and driver behavior necessary to comply with noise regulations; compliance with hours of operation; maintenance of landscaping needed to maintain visual subordination of the site; dust control; etc.

a. Generally the County ensures such compliance through its Code Enforcement Division. (Daviau testimony). However, based on the March 2, 2021 email from Mitch Nickolds, the director of the County Code Administration Department, the County is unable to enforce compliance with conditions of approval for existing mining operations. Mr. Nickolds stated that the County lacks sufficient enforcement staff, its primary responsibility is property nuisance abatement, code enforcement officers do not have training specific to enforcement of the surface mining conditions listed in the related CUP's, and the code violation penalties and appeals process is not scoped to address the enforcement of conditions of surface mine approvals. (Exhibit 206 at 556/Fex. 53. See also Exhibits 170 at 2 and 305 at 3).

b. Absent some method of enforcement, there is no guarantee that the applicant will continue to operate the mine in compliance with conditions, which may result in significant adverse environmental impacts. The applicant argues that the use is highly regulated by state and federal agencies: DNR, ECY, SWCAA, etc. However, prior activities on the site and at other mining operations in the County demonstrate that such enforcement is inadequate. This mine operated without required approvals for nearly three years, between 2017 and 2019. During that time it generated significant noise, dust, and other impacts on the surrounding area. Other permitted quarries in the County have also failed to comply with conditions of approval without any enforcement action by the County. (Exhibits 27a, 36, 38, 58, 170, 174, 290, 305, and 314).

c. It may be feasible for the applicant to develop and implement a monitoring program pursuant to CCC 40.250.022.F(2) to ensure compliance with conditions. For example the applicant could install and maintain permanent sound monitors on the boundaries to track compliance with noise regulations, radar speed detectors to ensure compliance with speed limits proposed to comply with noise limits, a truck trip counter to ensure compliance with daily truck limits, among other things. Such monitors could submit reports directly to the County and/or a neighborhood advisory group similar to that required for the Yacolt Quarry. The County could require the applicant cease mining activity and/or impose automatic fines if specified limitations are exceeded. However, there is no evidence in the record that such monitoring methods are feasible. Therefore, this issue must be addressed through the EIS process.

F. CONCLUSION

1. Based on the findings and discussion above, the examiner concludes that the application is incomplete and cannot be reviewed. CCC 40.240.050.H.1 and *Eagle Ridge*.

2. Solely in the event the above determination is overturned on appeal, the examiner finds that an EIS is required for this use as the proposed development will have a probable significant, adverse environmental impact. RCW 43.21C.031(1). Therefore, Friends' SEPA appeal should be granted and the environmental threshold determination should be remanded to the SEPA Responsible Official for further study of impacts from noise, dust, mine trucks experience equipment failure and impacting trains south of the

site, and enforcement of conditions of approval. Because the appeal is granted, the CUP application cannot be decided at this time.

G. DECISION

1. Based on the foregoing findings the examiner hereby:

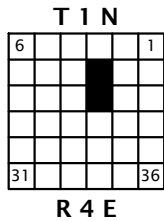
a. DENIES SLR-2020-00009 and WHR-2022-00106 and REVERSES the MDNSs, as the application is incomplete; and

b. Solely in the event the above determination is overturned on appeal, Grants Friends' SEPA appeal and REMANDS the environmental threshold determination to the SEPA Responsible Official only for further study of impacts from noise, dust, mine trucks experience equipment failure and impacting trains south of the site, and enforcement of conditions of approval. Because the appeal is granted, the CUP application cannot be decided at this time.

DATED this 4th day of August 2023.



Joe Turner, AICP, Hearings Examiner

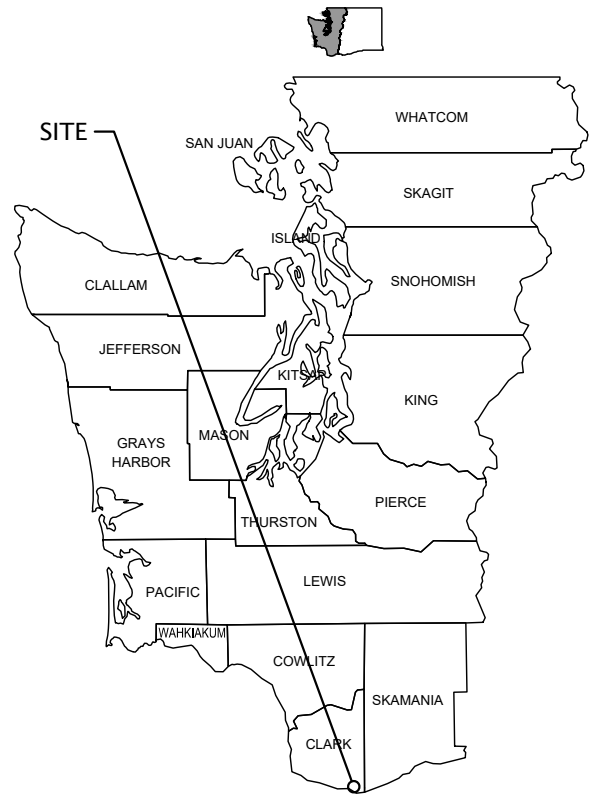


SITE COORDINATES:

LATITUDE: 45° 34' 51 " N

LONGITUDE: 122° 18' 03" W

WESTERN WASHINGTON



DIRECTIONS TO SITE

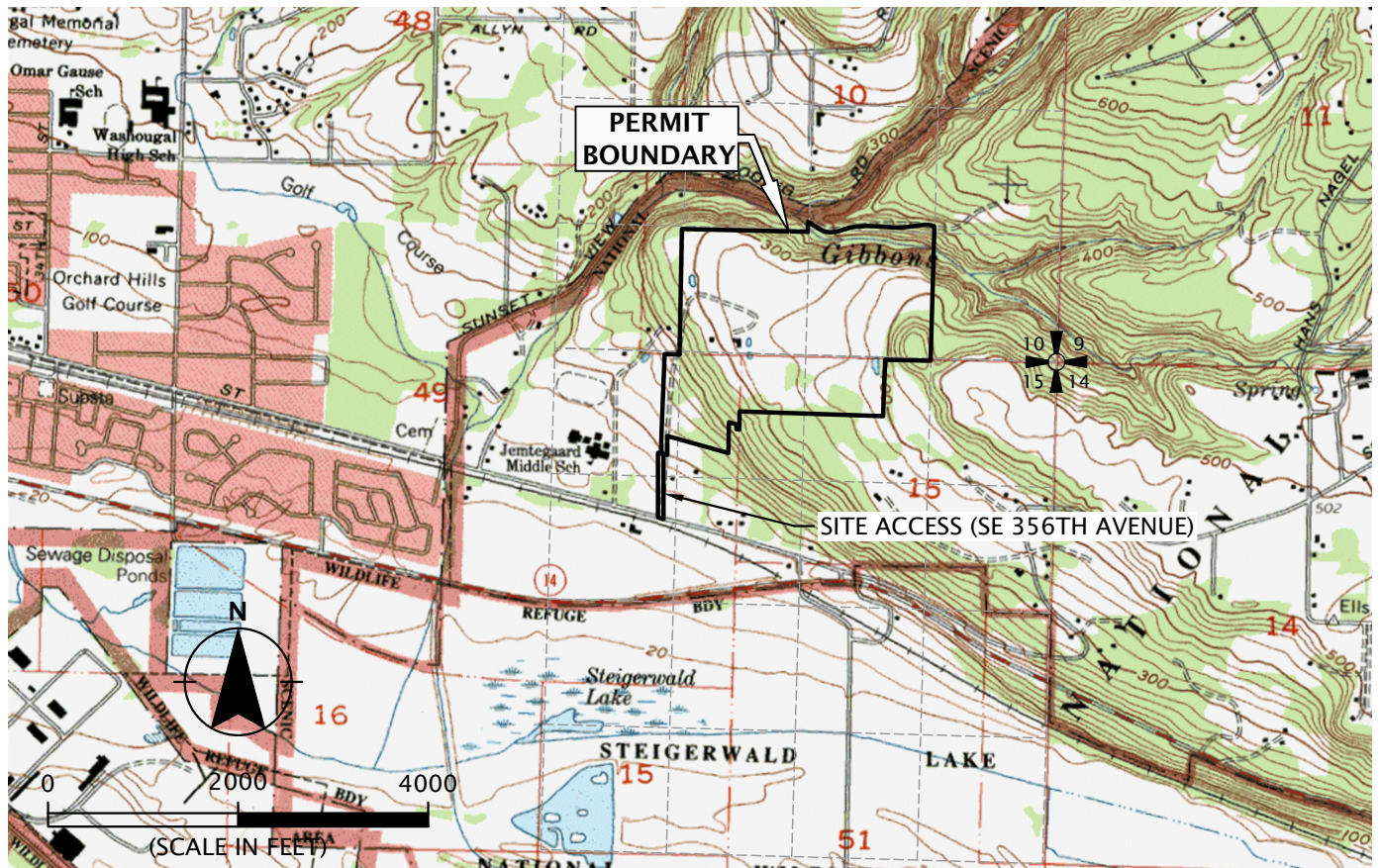
WASHOUGAL PIT IS LOCATED EAST OF WASHOUGAL, WA. FROM WASHOUGAL, DRIVE EASTBOUND ON SE EVERGREEN HIGHWAY. TURN LEFT (NORTH) ONTO SE 356TH AVENUE. THIS IS THE SITE ACCESS ROAD TO WASHOUGAL PIT. SITE OFFICE IS LOCATED APPROXIMATELY ½ MILE FROM INTERSECTION TO SE EVERGREEN HIGHWAY AND SE 356TH AVENUE.

LEGAL DESCRIPTION

THE PERMIT BOUNDARY IS LOCATED IN PORTIONS OF THE FOLLOWING QUARTER-QUARTER SECTIONS:

- SW QUARTER OF THE SW QUARTER OF SECTION 10
- SE QUARTER OF THE SW QUARTER OF SECTION 10
- SW QUARTER OF THE SE QUARTER OF SECTION 10
- NE QUARTER OF THE NW QUARTER OF SECTION 15
- NW QUARTER OF THE NW QUARTER OF SECTION 15
- SW QUARTER OF THE NW QUARTER OF SECTION 15
- NW QUARTER OF THE NE QUARTER OF SECTION 15

NOTE: USGS TOPOGRAPHIC QUADRANGLE MAP (WASHOUGAL, 1994) REPRODUCED USING MAPTECH TERRAIN NAVIGATOR PRO®.



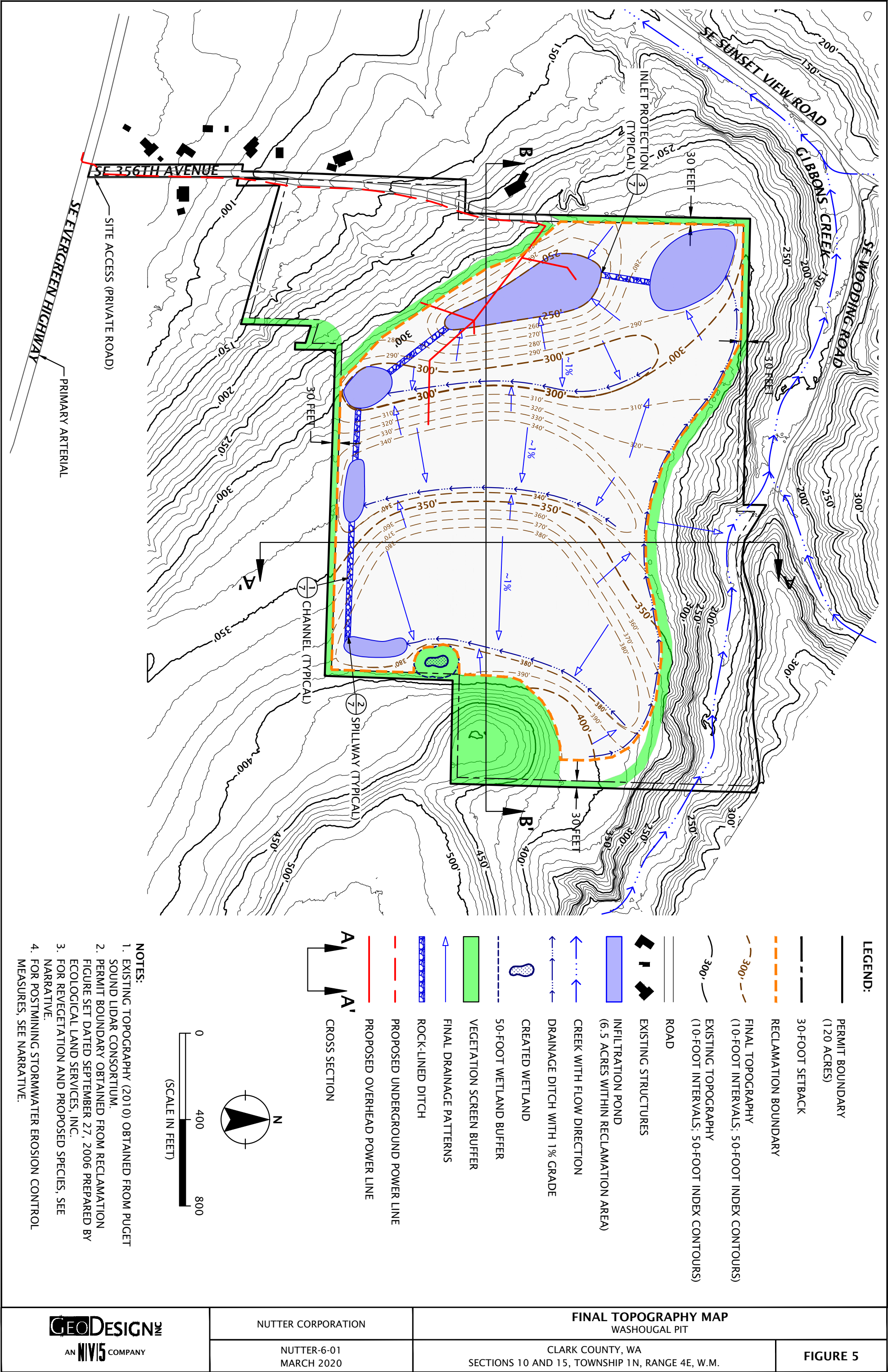
NUTTER CORPORATION

NUTTER-6-01
MARCH 2020

VICINITY MAP
WASHOUGAL PIT

CLARK COUNTY, WA
SECTIONS 10 AND 15, TOWNSHIP 1N, RANGE 4E, W.M.

FIGURE 1



Planner	Role	Company Name	Name	Address 1	Address 2	City	State	Zip Code	Email Address
Applicant/Contact Owner		Clark County	Richard Daviau	1499 SE Tech Center Pl	Ste 380	Vancouver	WA	98683	jamie.howsley@ordanrmls.com
N/H Association		Neighborhood Associations Council of Clark County	Judith Zimmerly	19304 NW 61st Ave		Ridgefield	WA	98642	
Utility Contact		City of Vancouver	Clark County	Desiree de Monye					abramson@lifescipartners.net
			Kristin Lehto						desiree.demoyne@clark.wa.gov
			Nicole Robison						kristin.lehto@cityofvancouver.us
			Attn: Steven D. McCoy	333 SW Fifth Ave	Ste 300	Portland	OR	97204	nicole.robison@vansd.org
FULL PACKET w/Notice		Friends of the Gorge	Attn: Aden Forsi	PO Box 730		White Salmon	WA	98672	steve@gorgefriends.org
FULL PACKET w/Notice		Columbia Gorge Commission	Att: Connie Acker	PO Box 730		White Salmon	WA	98672	afors@gorgecommission.org
FULL PACKET w/Notice		USDA Forest Service-Columbia River Gorge National Scenic Area	Attn: Christopher Donnermeyer	902 Wasco Ave		Hood River	OR	97031	connie.acker@gorgecommission.org
		USDA Forest Service-Columbia River Gorge National Scenic Area	Attn: Brittney Cardarella	903 Wasco Ave		Hood River	OR	97032	christopher.donnermeyer@usda.gov
		Washougal N/H Association	Attn: Brendan Addis						brittney.cardarella@usda.gov
		Columbia River Inter-Tribal Fish Commission	Attn: Stephanie Jolivet	700 NE Multnomah St	Ste 1200	Portland	OR	97232	brendanaddis@comcast.net
		Department of Archaeology & Historic Preservation		PO Box 48343		Olympia	WA	98504-8343	croi@critfc.org
		Camas Washougal Post Record		425 NE 4th Street		Camas	WA	98607	stephanie.jolivet@dahp.wa.gov
		Washington Department of Fish & Wildlife		5525 S 11th St		Ridgefield	WA	98642	kelly.moyer@camaspostrecord.com
		Nez Perce Tribe	Nakia Williamson	PO Box 350		Lapwai	ID	83540	teammriddle@dfw.wa.gov
		Confederated Tribes of the Umatilla Indians	Attn: Carey L. Miller	46411 Timine Way		Pendleton	OR	97801	nakiaw@NezPerce.org
		City of Washougal	Attn: Mitch Kneipp	1701 C Street		Washougal	WA	98671	NaturalResources@ctuir.org
SEPA Checklist Hardcopy		Washougal Library		1661 C Street		Washougal	WA	98671	mitch.kneipp@cityofwashougal.us
		Confederated Tribes-Warm Springs	WASCP Nation	PO Box C		Warm Springs	OR	97761	
		Yakama Indian Nation		PO Box 151		Toppenish	WA	98948	
		Columbia River Gorge - USDA Forest Service	Attn: Diana Ross	902 Wasco Ave	Ste 200	Hood River	OR	97031	
		Columbia River Gorge - USDA Forest Service	Attn: Robin Dobson	902 Wasco Ave	Ste 200	Hood River	OR	97031	
SEPA Checklist Hardcopy		Department of Ecology	Southwest Region	PO Box 47775		Olympia	WA	98504	
Email and hardcopy both		East County Fire and Rescue	Administrative Office	600 NE 267th Ave		Camas	WA	98607	grannmadedb24@gmail.com
			Violet Hiller & Debra Heidmiller	37112 SE Gibson Rd		Washougal	WA	98671	
			Sharileen James	39315 SE Evergreen		Washougal	WA	98671	
		Sauer Holdings, LLC	Jerry Sauer	26300 NE 16th St		Camas	WA	98607	jerry@sauerlegroup.com
			Sean & Karen Streeter	36861 SE Woodings Rd		Washougal	WA	98671	keren.streeter.01@gmail.com
			Ryan McDonald	2719 Main St		Washougal	WA	98671	ryan@mcdonaldexcavating.com
			Angelina Yelverton	2567 48th St		Washougal	WA	98671	yan@mcdonaldexcavating.com
		Barry C. Dick	Lucy Vaserfirer	4008 Lincoln Ave		Vancouver	WA	98660	angelina.yelverton78@gmail.com
			Lee Page	5610 I St		Washougal	WA	98671	berrycdick@yahoo.com
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			John Latta	5264 J Street		Washougal	WA	98671	mikebutlerwa@gmail.com
			Emma Fox	931 56th St		Washougal	WA	98671	jdatta@gmail.com
			Heldi Kellar	37810 NE Vernon Rd		Washougal	WA	98671	efox1519@gmail.com
			Andrea Stoner	434 51st		Washougal	WA	98671	nh.kellar@gmail.com
			William & Shella Good	PO Box 630	35931 SE Sunset View Rd	Washougal	WA	98671	andreaeb16@hotmail.com
			Garry & Kathy Carpenter	PO Box 402	35925 SE Sunset View Rd	Washougal	WA	98671	mrpobrer@aol.com
			Emily Oneal	2661 Canyon Creek Rd		Washougal	WA	98671	gcbagledad@gmail.com
			Romana M. Wood	622 45th Ct		Washougal	WA	98671	griceel25@gmail.com
		Southwest Washington Contractors Association	Nelson Holmberg	7017 NE Hwy 99	Ste 214	Vancouver	WA	98665	nelson@swca.org
			Robert Lindgren	931 56th St		Washougal	WA	98671	rindgren4247@gmail.com
			Carol Ahola-Smith	4584 Rolling Meadows Dr		Washougal	WA	98671	mcahola@yahoo.com
			John & Jenae Dryden	3310 SE 327th Ave		Washougal	WA	98671	jenaejynn@hotmail.com
			Allan & Trish Johnston	714 39th St		Washougal	WA	98671	avantit@gmail.com
			David, Joshua & Audrey Grice	6302 SE 356th Ave		Washougal	WA	98671	grichestead@gmail.com
			Katherine Humes	5094 K St		Washougal	WA	98671	katherine.humes@gmail.com
			Garrick & Gail Zakovics	5460 N St		Washougal	WA	98671	galzakovics@gmail.com
			Mimi Latta	5264 J St		Washougal	WA	98671	mimi.latta@gmail.com
			Malcum & Caley Deighton	4804 SE 379th Ave		Washougal	WA	98671	
			Suzanne Hebert	1385 42nd St		Washougal	WA	98671	suzannehebert2016@gmail.com
			Jim & Katherine Newman	4023 K Court		Washougal	WA	98671	jimkatenewman3@gmail.com
			Scott Johnston	1538 41st Ct		Washougal	WA	98671	sjohnston2004@msn.com
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			Timothy Drake	5234 J St		Washougal	WA	98671	me@timothydrake.com
			Paul & Jody Akers	35570 SE Evergreen Hwy		Washougal	WA	98671	jewelswithbody@gmail.com
			Gail Burgess	1636 NE Lone Loop		Camas	WA	98607	gailburgess188@comcast.net
			Lindy Logan	6403 SE 354th Ave		Washougal	WA	98671	littlindyfoohoo@hotmail.com
			Andrew & Heidi Dryden	36010 SE Sunset View Rd		Washougal	WA	98671	andrew.dryden@gmail.com

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		Laura Duerr	1017 54th St		Washougal	WA	98671
		Marchand & Greg Lewis	910 36th St		Washougal	WA	98671
	Friends of the Gorge	Attn: Nathan J. Baker	333 SW Fifth Ave	Ste 300	Portland	OR	97204
		Rachel Grice	6302 SE 356th Ave		Washougal	WA	98671
		David Pinkernell	31510 SE 8th Way		Washougal	WA	98671
		Lucy S. R. Austen	14505 245th St		Battle Ground	WA	98604
		Sherri Irish	4402 SE Zitelberger Rd		Washougal	WA	98671
	Reeves Kohn, Hennessy & Elkins	Gary Kahn	PO Box 86100		Portland	OR	97286
		Jamee Homuth	657 83rd St		Washougal	WA	98671
		Tina Watts-Urell	3700 SE Stiles Rd		Washougal	WA	98671
		Tara L. Hussein	930 15th St		Washougal	WA	98671
		Jessica Uler	1450 N Q Cir		Washougal	WA	98671
		Amanda Sullivan	4065 A Loop		Washougal	WA	98671
		Miguel Calvo	5664 J St		Washougal	WA	98671
		Jon Girod	4501 NE Minnehaha St	Ste 200	Vancouver	WA	98661
		Stacy Kysar	PO Box 1606		Brush Prairie	WA	98606
		Doug Palin	17311 NE 40th St		Vancouver	WA	98682
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		Kurt Stonex	222 E Evergreen Blvd		Vancouver	WA	98660
		Bruce Cross	16945 W Bridlington Ct		Surprise	AZ	85374
		Sherrie Jones	717 NE Hwy 99	Ste 214	Vancouver	WA	98665
		Ryan Hurley	275 W 3rd St	Ste 300	Vancouver	WA	98660
		Jerry Nites	3405 NE Royal Oaks Dr		Vancouver	WA	98662
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email returned hardcopy mailed		Nancy Olsen	1105 NE 6th Ave		Camas	WA	98607
email returned hardcopy mailed		Bryna Sampey	438 NE 39th Ave		Camas	WA	98607
email returned hardcopy mailed		Stephanie Feldstein	32903 SE 20th Cir		Washougal	WA	98671
		Marie & Gary Ogier	28042 NE 1212th Ave		Battle Ground	WA	98604
		Robert Durgan	12204 NW 15th Ave		Vancouver	WA	98685
		Susan Saul	PO Box 1966		Vancouver	WA	98668-1966
		Donald G. Holsinger	21510 NW 21st Pl		Ridgefield	WA	98642
		Jean M. Avery	13314 SE 19th St	Apt. T4	Vancouver	WA	98683
		Scott A. Hogan	1400 Washington St	Ste 100	Vancouver	WA	98660
		Stephen W. Horenstein	500 Broadway	Ste 370	Vancouver	WA	98660
		Pat Kuzner	4109 Fruit Valley Rd		Vancouver	WA	98660
		Jerry Olson	222 E Evergreen Blvd		Vancouver	WA	98660
		Gregory Shaw	28601 NE Emerald Rd		Camas	WA	98607
email returned hardcopy mailed		Justin Wood	103 E 29th St		Vancouver	WA	98663
		Sean Philbrood	900 Washington St	Ste 1040	Vancouver	WA	98660
		Maren L. Calvert	500 Broadway	Ste 370	Vancouver	WA	98660
		Bradley J. Carlson	1101 NE 112th Ave		Vancouver	WA	98684
		Erin Allee	25905 NE 52nd Way		Vancouver	WA	98682
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		Greg Brown	PO Box 414		Anboy	WA	98601
		Gregg Paul	PO Box 70040		Vancouver	WA	98665
		Karen Wood	14910 NE 46th St		Vancouver	WA	98682
email returned hardcopy mailed		Regan & Martin Fisher	1849 SE 43rd Ave		Portland	OR	97215
email returned hardcopy mailed		Steve Wilson	6101 NE 127th Ave		Vancouver	WA	98682
email returned hardcopy mailed		Laurie Kerr	11102 NE 196th St		Battle Ground	WA	98604
email returned hardcopy mailed		Kristin Price	19813 NE 13th St		Camas	WA	98607
email returned hardcopy mailed		Sherene Huntzinger	1113 NW 46th St		Vancouver	WA	98663
email returned hardcopy mailed		Geff Halle	15333 SW Sequoia Pkwy	#190	Portland	OR	97224
		Harry Alan Teel	6200 NW Dogwood Dr		Vancouver	WA	98663
		Terry Pifer	18201 NE 84th Ave		Battle Ground	WA	98604
		Dawn Dietrich	7100 NE 249th Way		Battle Ground	WA	98604
		Craig Martes	5108 NE 44th St		Vancouver	WA	98661
		Nicole Woodside	19813 SE 9th St		Camas	WA	98607
		John Moody	PO Box 908		Battle Ground	WA	98604
		Steve Getsinger	16005 NE 31st Ave		Ridgefield	WA	98642
		Richard Kolber	11412 NE 49th St		Vancouver	WA	98682
		Susan Haynes	711 Skamania Landing Rd		Stevenson	WA	98648
		Michael Haynes	711 Skamania Landing Rd		Stevenson	WA	98684
		Emilia Brasler	4132 NE Hayes St		Camas	WA	98607
		Sabrina Hall	2021 Simpson Ave.		Vancouver	WA	98660

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	Mark Leed	3419 E 21st St	Vancouver	WA	98661	
	Laura Bourland	5106 NE 320th Ave	Camas	WA	98607	
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	Carol Edwards	981 Schoold House Rd	Underwood	WA	98651	caroledwards18@msn.com
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	Mona McNeill	15704 NE 28th Ct	Vancouver	WA	98686	
	Lyn Sowdon	12706 NE 11th St	Vancouver	WA	98684	
	Mary Grout	3712 NW Sandpiper Dr	Woodland	WA	98674	MCGROUT@msn.com
	CJ Joyce	2516 E 27th St	Vancouver	WA	98661	
	Francis Lenski	921 NW 115th Cir	Vancouver	WA	98685	
	Den Wichar	711 W 25th St.	Vancouver	WA	98660	
	Pamela Nordquist	11022 Washougal River Rd	Washougal	WA	98671	
	Robert Nordquist	11022 Washougal River Rd	Washougal	WA	98671	
	Colleen Bonin	22824 NE 254th Ct	Battle Ground	WA	98604	
	Jean Avery	13314 SE 19th St	Vancouver	WA	98683	
	Debra Heidmiller	37112 SE Gibson Rd	Washougal	WA	98671	
	Norm Enfield	13303 SE McGilivray Blvd	Vancouver	WA	98683	
	Kelly Kirk	4706 NE 131st Ave	Vancouver	WA	98682	
	Julie Grobelny	2506 E 28th St	Vancouver	WA	98661	
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	Kathy Vanderpool	20810 NE 384th St	Amboy	WA	98601	
	Thomas Gordon	6421 St.	Washougal	WA	98671	
	Michael Caboose	2615 NE 359TH Ave	Washougal	WA	98671	
	Jodi Miller	3340 NW Pacific Rim Dr	Camas	WA	98607	
	Sarah Hafer	12111 NE 4th St	Vancouver	WA	98684	
	Cynthia Ellis	810 NW 104th Loop	Vancouver	WA	98685	
	Jim Byrne	28501 NW 7th Ave	Ridgefield	WA	98642	
	Bruce McFadden	2406 SE 133rd Ct	Vancouver	WA	98683	mac1956@gmail.com
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	Tracey Heil	24920 NE 14th St	Camas	WA	98607	
	Wendy Wilson	1408 NE 238th Pl	Camas	WA	98607	
	Renee Sharpe	3629 NW 25th Ave	Camas	WA	98607	
	Lyndee Cunningham	1529 Division St	Camas	WA	98607	
	Sue Snyder	1836 42nd Ct	Washougal	WA	98671	
	Drew Snyder	1836 42nd Ct	Washougal	WA	98671	
	Louis Ruiz	4910 NE 21st Ave	Vancouver	WA	98663	
	Matthew Ryan	7812 NE 60th St.	Vancouver	WA	98662	
	Kimberley Smith	13402 NE 45th St	Vancouver	WA	98604	
	Kevin Rothe	40505 NE 261 Ct	Amboy	WA	98601	
	David Sheets	2300 SE 105th Ct.	Vancouver	WA	98664	
	Jeremy Moulton	4005 NE 155th Ave	Vancouver	WA	98682	
	James Stockton	4411 NE 64th Ave	Vancouver	WA	98661	
	Ronald Robb	13313 NE 41st St.	Vancouver	WA	98682	
	Alan Armstrong	30613 NE 146th Ave	Battle Ground	WA	98604	
	Thomas Fleming	8602 142nd Ave	Vancouver	WA	98682	
	Timothy Schile	5905 NE 111th St	Vancouver	WA	98686	
	Shawn Pifer	18201 NE 84th Ave	Battle Ground	WA	98604	
	Loren Bonneville	8208 NE 63rd St	Vancouver	WA	98662	
	Matthew Sweeney	9006 NE 92nd St	Vancouver	WA	98662	
	Tyler Whinger	2303 F St	Washougal	WA	98671	
	Cody Sweeney	9006 NE 92nd St	Vancouver	WA	98662	
	Stephen Krull	7702 NE 55th Ave	Vancouver	WA	98661	
	Robert Trent	949 N 35th Ave	Ridgefield	WA	98642	
	Kristopher Gensler	7315 NE 211 Cir.	Battle Ground	WA	98604	
	Nicholas Brown	22012 NE 83rd St	Vancouver	WA	98682	
	Jason Woodside	5107 NE Ja Moore Rd	La Center	WA	98629	
	Wyatt Lewis	4450 NW Aspen St	Camas	WA	98607	
	George Price	605 NW 23rd Ave	Battle Ground	WA	98604	

	Charles Mauldin	16500 SE 1st	#148	Vancouver	WA	98684
	Deion Ravens	3602 NE 145th Ave		Vancouver	WA	98682
	Albert Wenzlinger	9816 NE 94th Ave		Vancouver	WA	98662
	Frank Pistsch	4614 NE 54th St		Vancouver	WA	98661
	Anthony Johnson	303 NE 129th St		Vancouver	WA	98685
	Gregg Herford	5902A NE 259th St		La Center	WA	98629
	Robert Holloway	7521 S 11th St		Ridgefield	WA	98642
	Michael Schoen	11807 NW 9th Ave		Vancouver	WA	98685
	Michael Sharp	8007 NE 101st Cir		Vancouver	WA	98662
	Rodney Cox	11612 NW 7th Ave		Vancouver	WA	98685
	Sarah McKernan	15212 NE 19th Ct		Vancouver	WA	98686
	Eric Blur	26515 NE 29th Ave		Ridgefield	WA	98642
	Vincent Bennet	39191 St	#B	Vancouver	WA	98663
	Justin Wardell	6307 NW McKinley Dr.		Vancouver	WA	98665
	Blake Jennerjohn	1024 W 8th Cir		La Center	WA	98629
	Michael Coe	PO Box 692		Anboy	WA	98601
	Todd Honore	1276 E 18th St		La Center	WA	98629
	Ivan Lardizabal	6811 NE 124th Ave	#63	Vancouver	WA	98682
	Justin Deng	16012 NE Evergreen Hwy		Vancouver	WA	98683
	Genaro Roa	7517 NE 107th Ave		Vancouver	WA	98662
	Russell Lott	495 Suset Ridge Dr		Washougal	WA	98671
	Austin Krebs	1703 Z St		Vancouver	WA	98661
	Tye Eldered	30610 SE 30th St		Washougal	WA	98671
	Dana Larson	4100 NE 41st St		Vancouver	WA	98661
	Michael Nicolas	18617-A NE 39th St		Anboy	WA	98601
	Wayne Stephens	509 NW 30th Ave		Battle Ground	WA	98604
	Russell Marks	30720 NE Kelly Rd		Yacolt	WA	98675
	Jeff Deringer	30714 NE Spud Mountain Road		Camas	WA	98607
	Hunter Gilcrease	PO Box 357		Brush Prairie	WA	98606
	Dylan Fender	12301 NE 368th St		La Center	WA	98629
	Cody Jackson	1850 NW 27th Ave		Camas	WA	98607
	Christopher Younh	18415 S Silvan Dr.		Yacolt	WA	98675
	Patrick Walton	2207 NE 107 St		Vancouver	WA	98686
	Larry Porter	9501 SE 12th St		Vancouver	WA	98664
	Derek Byers	18605 NE Risto Rd		Battle Ground	WA	98604
	Macauly Preuss	107 Northridge Dr.		Ridgefield	WA	98642
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	Kole Burns	3409 NE 62nd Ave	#213	Vancouver	WA	98661
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	Dalton Nelson	9905 NE 112th Ct.		Vancouver	WA	98662
	Raymond Miller	10506 NE 76th Way		Vancouver	WA	98682
	Deborah Chinakos	3044 NW 47th Dr		Camas	WA	98607
	Jeffery Woodside	19813 SE 9th St		Camas	WA	98607
	Rhonda Kironen	14309 NE Axford Rd		Battle Ground	WA	98604
	Benjamin Harboyr	1221 SE Ellsworth Rd.	#C024	Vancouver	WA	98664
	Grant Zirkle	9506 SE French Rd	#B	Vancouver	WA	98664
	Brenda Halstead	123 NE 14th St		Battle Ground	WA	98604
	Shannon Buell	1515 E 4th Way		La Center	WA	98629
	Jodi Boeckman	15615 NE 1st Cir		Vancouver	WA	98684
	Curtis Lafferty	15901 NE Noble St		Vancouver	WA	98682
	Jeff Daly	601 W 23rd St		Vancouver	WA	98660
	John Kelley	35612 NW 26th Ave		La Center	WA	98629
	David Preuss	107 Northridge Dr.		Ridgefield	WA	98624
	Brandy Jones	13703 NE 61st St		Vancouver	WA	98682
	Tyrone Brewer	30516 NE Kelly Rd		Yacolt	WA	98675
	Gerald Nutter	7211-A NE 43rd Ave		Vancouver	WA	98661
	David Lafferty	15901 NE Noble St		Vancouver	WA	98682
	Nathan Hastay	30919 NW Spencer Rd		Ridgefield	WA	98642
	Tim Attebery	3601 20th E		Fife	WA	98424
email returned hardcopy mailed	Associated General Contractors of Washington	1642 NW 34th Ave		Camas	WA	98607
email returned hardcopy mailed	Pape Machinery	13601 St		Washougal	WA	98671
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	Julie Smith	PO Box 827		Washougal	WA	98671
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	The Conservation Angler					

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	Davidson & Associates	Tony Johnson	11112 NE 51st Circle		Vancouver	WA	98682	tony@davidsninsurance.com
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		Beylee Fox	1012 57th St		Washougal	WA	98671	beyleef71@gmail.com
		Alex Post	1012 57th St		Washougal	WA	98671	alexandevpost@gmail.com
		Dwight Hollar	1503 Fairway Dr		Washougal	WA	98671	dwightholla@gmail.com
		Larry Keister	4402 SE Zitzelberger Rd		Washougal	WA	98671	larryksherril@gmail.com
		Tracey Stinchfield	39404 SE 17th St		Washougal	WA	98671	traceystinch@gmail.com
		Jeff Condon	6400 SE 356th Ave		Washougal	WA	98671	jeffcondon73@yahoo.com
		Nick Rotschy	11615 NE 72nd Ave		Vancouver	WA	98686	nick.mastie@rotschyinc.com
		Peter Cornelison	1003 5th St		Hood River	WA	97031	peter.cornelison@outlook.com
		Don Steinke	4833 NE 238th Ave	PO Box 822392	Vancouver	WA	98682	crvan.couversai@gmail.com
		Andy Dryden	36512 SE Sunset View Rd		Washougal	WA	98671	andrew.dryden@gmail.com
		Peter Konneker	1718 NE 37th Ave		Camas	WA	98607	pkonneker@gmail.com
		David & Ellen Solevad	3210 45th St		Washougal	WA	98671	dsolevad@gmail.com
		Miles Johnson	PO Box 950		Hood River	OR	97031	miles@columbiariverkeeper.org
		Jill Devine	13722 Washougal River Rd		Washougal	WA	98671	jdevines9@gmail.com
		Kiley Reese	36703 SE Sunset View Rd		Washougal	WA	98671	kileyreese@gmail.com
		Lori Talley	35604 SE Evergreen Hwy		Washougal	WA	98671	ltalley32@hotmail.com
		Cheryl Alexander	6505 SE 356th Ave		Washougal	WA	98671	caldro9@gmail.com
		Aaron Andrade	5620 SE Schiller St		Portland	OR	97206	
		Abby Phillips	1215 NW 25th Cir		Camas	WA	98607	
		Adrian Farnsworth	PO Box 2104		Battle Ground	WA	98604	
		Alan Goodman	2439 NW Norwood Pl		Camas	WA	98607	algoodman1@comcast.net
		Allison Jones	3204 NE 54th Ave		Portland	OR	97213	
		Anne Beardsworth	4711 Z St		Washougal	WA	98671	anne@kitaco.com
		Anthony Collier	32603 SE 27th St		Washougal	WA	98671	
		April Atwood	6306 SE 21st Ave		Portland	OR	97202	hissrattlesnap@gmail.com
		August Burns	75 NE Buffalo St		Portland	OR	97211	latesummerfire@gmail.com
		Barbara Traver	3740 SE Washington St		Portland	OR	97214	
		Berry Buchanan	20031 SW 69th St		Tualatin	OR	97062	
		Beth Hartwell	822 Adams Lp		Hood River	OR	97031	
		Boyd Baumgartner	1420 NE 394th Ave		Washougal	WA	98671	
		Brett Tarnet	4021 Addy St		Washougal	WA	98671	brett@btarnet.com
		Brette Greenwood-Wing	1012 SE 146th Ct		Vancouver	WA	98683	
		Bridget Callahan	46781 Winfrey Rd		Westfir	OR	97492	
		Carol Douglass	821 Columbia St		Hood River	OR	97031	

	Carol Levanen	PO Box 2188		Battle Ground	WA	98604
	Carole Connell	4626 SW Hewett Blvd		Portland	OR	97221
	Carole Miles	1946 SW 26th Ct		Gresham	OR	97080
	Carolyn Williams	3322 NE 127th Ave		Portland	OR	97230
	Carrie Parks	13009 NE 93rd St		Vancouver	WA	98682
	Cheryl Gavin	2401 NE Parkview Dr		Vancouver	WA	98686
	Cheryl McAtee	18924 NE Fourth Plain Blvd		Vancouver	WA	98682
	Chris Moehring	19511 NE 22nd Cir		Vancouver	WA	98684
	Clifford Temple	1800 NE 17th Ave		Portland	OR	97212
	Dana Garden	658 Madison St		Eugene	OR	97402
	Daniel Allen	30216 NE Wylie Rd		Camas	WA	98607
	Daniel Davis	4608 NW Trout St		Camas	WA	98607
	Daniel Morrison	931 NE 69th Ave		Portland	OR	97213
	David Parker	1060 Cathlamet Dr		Oak Harbor	WA	98277
	Deanna Eichler	40205 SE Gibson Rd		Washougal	WA	98671
	Deb Lawless	15 Smokey Ridge Rd		Cook	WA	98605
	Debbie Murphy	2420 SE Balboa Dr		Vancouver	WA	98683
	Deved Altman	14242 SE Main St		Portland	OR	97233
	Diane Adkin	2620 NW Cascade St		Camas	WA	98607
	Eileen Sleva	5680 SE Pine St		Hillsboro	OR	97123
	Ellie Hutton	4216 NE 292nd Ave		Camas	WA	98607
	Emily Olson	2614 E St		Washougal	WA	98671
	Evan Watts	3309 Sugar Creek Pike		Nicholasville	KY	40356
	Fernanda Gwinner	4113 NE 47th Ave		Vancouver	WA	98661
	Gena Connelly	1629 SW 88th Ave		Portland	OR	97225
	Gina Zanarini	496 SE Ramp St		Roseburg	OR	97470
	Greg Monteleone	416 Bluff Rd		Hood River	OR	97031
	Hanna Pavlick	1200 NE Highland St		Portland	OR	97211
	Hava Dennerbert	12916 NE Clackamas St		Portland	OR	97230
	Heidi Cody	1506 SE 113th Ct		Vancouver	WA	98664
	Ian Jeffery	6466 E B St		Tacoma	WA	98404
	Ilene Le Vee	2030 Wingate Dr SE		Olympia	WA	98513
	Jack Livingston	4408 B St		Washougal	WA	98671
	James Hackman	125 Cleveland St		Port Hadlock-Longdale	WA	98339
	James Lantz	1713 SE Manor Ave		Vancouver	WA	98683
	Jeanine Russell	128 NE James St		Camas	WA	98607
	Jeanneane Rystrom	3736 NE 18th Ave		Portland	OR	97212
	Jeff Wirth	3705 SE Washougal River Rd		Washougal	WA	98671
	Jeffery Schwilk	5802 N Mississippi Ave		Portland	OR	97217
	Jen Capone	49 Souder Rd		Roversford	PA	19468
	Jessica Downing	2152 N M Ct		Washougal	WA	98671
	Jill Briney	1400 SE Lava Dr		Milwaukie	OR	97222
	JL Angell	2391 Ponderosa Rd		Rescue	CA	95672
	Joana Kirchhoff	3414 NE 73rd Ave		Portland	OR	97213
	Joanne Brown	7125 SE 78th Ave		Portland	OR	97206
	Jodi Frisina	304 SE 101st Ave		Vancouver	WA	98664
	Jody Akers	35570 SE Evergreen Hwy		Washougal	WA	98671
	John Head	8 Windago Ln		White Salmon	WA	98672
	John Nettleton	4311 SE 37th Ave		Portland	OR	97202
	John Rogers	2014 Lonely Ln		Mosier	OR	97040
	Judy Henderson	2541 SW Miles St		Portland	OR	97219
	Judy Pearson	1525 E 10th St		The Dalles	OR	97058
	Karen Matz	4324 McCallister Pl		Washougal	WA	98671
	Karen Miracle	PO Box 334		Lyle	WA	98635
	Karissa Halstrom	7819 NE 136th Ave		Vancouver	WA	98682
	Karyn Gibson	5755 N Moore Ave		Portland	OR	97217
	Katherine Foldes	13360 NW Northrup St		Portland	OR	97229
	Katherine Horn	2642 SE 49th Ave		Portland	OR	97206
	Katherine Reilly	6106 SE Reedway St		Portland	OR	97206
	Kathi Pickett	13526 NE Powell Rd		Brush Prairie	WA	98606
	Kathleen Worley	9141 SW 23rd Dr		Portland	OR	97219
	Kati Wilson	30892 Bellfountain Rd		Corvallis	OR	97333
	Kendall Acheson	1211 SW Highland Rd		Portland	OR	97221
	Kim O'Hara	12308 NE 103rd Ave		Vancouver	WA	98662
	Kitty Church	3610 NE 67th Ave		Portland	OR	97213

	Vanessa Covington	1770 Lemon Ave	Long Beach	CA	90813	
	Mika Barrett	610 NE 148th St	Vancouver	WA	98685	mikabarrett@gmail.com
	Matthew Condon	356th Ave	Washougal	WA	98671	condonmatt8@gmail.com
	Edmond Murrell	37118 SE Gibson Rd	Washougal	WA	98671	ed.murrell.sm@gmail.com
Lower Columbia Estuary Partnership	E. Elaine Placido DPA	400 NE 11th Avenue	Portland	OR	97232	elplacido@estuarypartnership.org
	Richard Dyriand	27511 NE 29th Ave	Ridgefield	WA	98642	toppacifcz@msn.com
The Columbian	Lauren Ellenbecker	701 W 8th St	Vancouver	WA	98660	lauren.ellenbecker@columbian.com



EXHIBIT LIST

Project Name: **WASHOUGAL PIT**

Case Number: **SLR-2020-00009**

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
1		Applicant	Application Package
2		CC Land Use	Legal Lot Determination
3		CC Land Use	Fully Complete
4	7/1/20	CC Land Use	Notice of Type III Application
5	7/1/20	CC Land Use	Affidavit of Mailing - Exhibit 4
6	7/1/20	CC Land Use	Download Notification - Aiden Forsi
7	7/1/20	CC Land Use	Download Notification - Steven D. McCoy
8	7/7/20	CC Land Use	Download Notification - Christopher Donnermeyer
9	6/9/20	Applicant	Affidavit Of Posting
10	6/11/20	CC Land Use	Cost Recovery Agreement
11	7/7/20	Violet Hiller	Hiller Comment
12	7/9/20	Sharleen James	James Comment
13	7/9/20	Jerry Sauer	Sauer Comment
14	7/10/20	Ryan McDonald	McDonald Comment
15	7/10/20	Violet Hiller	2nd Hiller Comment
16	7/11/20	Angelina Yelverton	Yelverton Comment
17	7/11/20	Barry Dick	Dick Comment
18	7/11/20	Lee Page	Page Comment
19	7/11/20	Mike Butler	Butler Comment
20	7/11/20	John Latta	Latta Comment
21	7/12/20	Emma Fox	Fox Comment
22	7/13/20	Nate & Heidi Keller	Keller Comment
23	7/13/20	Andrea Bateman	Bateman Comment
24	7/13/20	Robert Lingren	Lindgren Comment
25	7/16/20	Malcolm & Caley Deighton	Deighton Comment
26	7/14/20	Carpenter & Good	Carpenter & Good Comment
27a	7/15/20	Sean Streeter	Streeter Comment
27b	7/13/20	Sean Streeter	Streeter Comment
28	7/16/20	Emily Oneal	Oneal Comment
29	7/15/20	Romana Wood	Wood Comments
30	7/15/20	Nelson Holmberg	Holmberg Comments
31	7/15/20	Carol Ahala	Ahola-Smith Comments
32	7/15/20	Jenae Dryden	Dryden Comments
33	7/15/20	Trish Johnson	Trish Johnson comments
34	7/15/20	Audrey Grice	Audrey Grice Comments
35	7/15/20	Katie Humes	Humes Comments
36	7/16/20	Gail Zakovics	Zakovics Comments
37	7/16/20	Mimi Latta	Mimi Latta Comments
38	7/17/20	Allan Johnson	Allan Johnson Comments
39	7/16/20	Suzanne Hebert	Hebert Comments
40	7/16/20	Jim & Katherine Newman	Newman Comments
41	7/16/20	April & Doug Engle	Engle Comments
42	7/16/20	Scott Johnston	Scott Johnston Comments
43	7/16/20	David Grice	David Grice Comments
44	7/16/20	Friends of the Columbia Gorge	Friends Comments

Copies of these exhibits can be viewed at:

Department of Community Development

Development Services Division

1300 Franklin Street

Vancouver, WA 98666-9810

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
45	7/16/20	Joshua Grice	Joshua Grice Comments
46	7/16/20	Aaron & Angela Boehning	Boehning Comments
47	7/16/20	City of Washougal	City of Washougal Comments
48	7/16/20	Rachel Grice	Rachel Grice Comments
49	7/16/20	Julie Bailey	Bailey Comments
50	7/16/20	Rob Seaman	Seaman Comments
51	7/16/20	Timothy Drake	Drake Comments
52	7/16/20	Nyla Jacobs Kirby	Jacobs Kirby Comments
53	7/16/20	Paul & Jody Akers	Akers Comments
54	7/16/20	Gail Burgess	Burgess Comments
55	7/16/20	Lindy Logan	Logan Comments
56	7/16/20	Andrew Dryden	Dryden Comments
57	7/15/20	Zachary Grice	Zachary Grice Comments
58	7/16/20	Samuel Grice	Samuel Grice Comments
59	7/17/20	Dave Gjendem	Gjendem Comeentss
60	7/17/20	Laura Duerr	Duerr Comments
61	7/17/20	Marchand Lewis	Lewis Comments
62	7/22/20	David Pinkernell	Pinkernell Comments
63	7/30/20	Ramona Sinhart	Sinhart Comments
64	7/22/20	Chris Donnermeyer	Survey Determination Form
65	7/22/20	Chris Donnermeyer	Cultural Survey Report
66	7/22/20	Chris Donnermeyer	Heritage Review Letter
67	7/2/20	CC Review Staff	Early Issues
68	7/29/20	CC Engineering Staff	CARA Information
69	7/19/20	Applicant	Supplemental Application Submittal
70	7/31/20	Applicant	Access Plan
71	7/31/20	Applicant	Revised Geo-Hazard Study
72	7/31/20	Applicant	Revised Preliminary TIR
73	7/31/20	Applicant	Revised Hydrogeology Report
74	8/7/20	CC Land Use	2003 Livingston Mt Quarry Decision
75	8/20/20	CC Land Use	Cultural 30-day Comment Period
76	8/21/20	Applicant	SR-14 Truck Traffic
77	8/18/20	CC Review Staff	Updated Early Isssues
78	9/2/20	Applicant	Amended Hydro-CARA Report
79	9/2/20	Applicant	Minor Road Modification Request
80	9/2/20	Applicant	Amended Sound Analysis
81	9/2/20	Applicant	SWPPP
82	9/30/20	Applicant	Mining Activity TIR
83	9/30/20	Applicant	Amended Sound Analysis
84	9/30/20	Applicant	Revised Hydro-CARRA Report
85	9/30/20	Applicant	Silica Dust Response
86	10/22/20	Applicant	Amended Sound Analysis
87	11/2/20	Applicant	Amended Sound Analysis
88	11/18/20	Ramboll	Review of Noise Analysis
89	11/24/20	Applicant	Amended Sound Analysis
90	11/25/20	Applicant	Updated SEPA Checklist
91	12/9/20	Applicant	Law Memo - Sound Standards
92	1/12/20	Applicant	Amended Sound Analysis
93	1/27/20	Applicant	Amended Sound Analysis
94	2/7/20	Applicant	Safe Driving Protocols
95	2/24/21	CC Land Use	Notice of Type III Application
96	2/24/21	CC Land Use	Affidavit of Mailing - Exhibit 95
97	3/3/21	Sherri Irish	Comments
98	3/11/21	Julie Witteman	Comments
99	3/8/21	Jerry Sauer	Comments
100	3/8/21	Nicole Damer	DNR Comments
101	3/9/21	Emma Fox	Comments

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Development Services Division
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Vancouver, WA 98666-9810

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
102	3/11/21	Jamee Homuth	Comments
103	3/10/21	Friends of the Columbia Gorge	SEPA Appeal
104	3/10/21	Applicant	SEPA Appeal
105	3/11/21	Applicant	Applicants Reprosence to MDNS
106	3/11/21	Tina Watts-Urell	Comments
107	3/11/21	Tara L. Hussein	Comments
108	3/11/21	Jessica Ller	Comments
109	3/11/21	Violet Hiller - Debra Heidmiller	Comments
110	3/11/21	Amanda Sullivan	Comments
111	3/11/21	Miguel Calvo	Comments
112	3/4/21	Friends of the Columbia Gorge	Comments on 2/24/21 Notice
113	3/18/21	Applicant	Stamped Mining Activity TIR
114	3/29/21	CC Land Use	Download Notification Exhibits 4 -113 - Nathan Baker
115	3/29/21	CC Habitat Review	Snag Issue
116	4/6/21	SWCAA	Comments
117	4/8/213	Dept. of Ecolgy	Comments
118	4/8/21	Applicant	Comments on revised SEPA Determination
119	4/9/21	Applicant	Sign Posting Affidavit
120	4/23/21	CC Land Use	Staff Report & Recommendations
121	4/23/21	CC Landuse	Staff Report Affidavit of Mailout
122	4/18/21	Sharleen and Lester James	Comments
123	4/18/21	Applicant	Habitat Snag Response
124	4/18/21	Applicant	Proposed Lighting
125	4/27/21	Ramboll	Updated Noise Analysis Review
126	4/30/21	CC Development Engineering	Draft Pavement Ware Agreement
127	5/5/21	Friends of the Gorge	SEPA Appeal
128	5/6/21	CC Wetland/Habitat Review	Wetland Habitat Issues
129	5/6/21	Dan and Adria Fuller	Comments
130	5/6/21	Applicant	SEPA Appeal
131	5/6/21	Applicant	Transcript of Aggregate Work Session
132	5/6/21	Applicant	Responsible Aggregate Planning Letter
133	5/6/21	Applicant	SWCAA – Air Permit
134	5/6/21	Applicant	Revised Critical Areas Report and Mitigation Plan
135	5/6/21	Tony Johnson	Comments
136	5/6/21	David Brown	Comments
137	5/6/21	Sherri Irish	Comments
138	5/6/21	Applicant	Amended Sound Analysis
139	5/6/21	54 Opposition Letters	Comments
140	5/7/21	Wetland/Habitat Review	Wetland Buffer Memo
141	5/7/21	Jon Girod	Comments
142	5/7/21	Jerry Sauer	Comments
143	5/7/21	Stacy Kysar	Comments
144	5/7/21	Doug Palin	Comments
145	5/6/21	Carol Panfilio	Comments
146	5/7/21	REbecca Maxey	Comments
147	5/7/21	Kurt Stonex	Comments
148	5/7/21	Bruce Cross	Comments
149	5/7/21	Chrissy Lyons/SWCA	Comments
150	5/7/21	Ryan Hurley	Comments
151	5/7/21	Jerry Nies	Comments
152	5/7/21	Scott Hogan	Comments
153	5/7/21	Keith Gagnier	Comments
154	5/7/21	Nancy Olsen	Comments
155	5/7/21	Sean Streeter	Comments
156	5/7/21	G. Patrick Kuzmer	Comments
157	5/7/21	96 Letters in support	Comments
158	5/7/21	Bryna Sampey	Comments

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
159	5/7/21	Applicant	Sand & Gravel General Permit Submittal
160	5/7/21	Dept. of Ecology	Sand & Gravel General Permit (WAG501241)
161	5/7/21	Dept of Natural Resources	Revised Surface Mine Reclamation Permit
162	5/7/21	Dept. of Ecology	Stormwater Inspection Reports
163	5/7/21	Stephanie Feldstein	Comments
164	5/7/21	Jean Avery	Comments
165	5/9/21	Marie Ogier/East Fork CC	Comments
166	5/9/21	Robert Durgan	Comments
167	5/9/21	Susan Saul/Audubon Society	Comments
168	5/9/21	Donald Holsinger	Comments
169	5/10/21	Jerry Olson	Comments
170	5/10/21	Gregory Shaw	Comments
171	5/10/21	Applicant	Pre-Hearing Brief
172	5/10/21	Harry Alan Teel	Comments
173	5/10/21	Justin Wood/BIA	Comments
174	5/10/21	Erin Allee	Comments
175	5/10/21	Applicant	Aggregat Resource Reserve Study in Clark County
176	5/10/21	Applicant	Application Under Protest Letter
177	5/10/21	Applicant	Nickolds Letter on NSA Permit Deadline
178	5/10/21	Applicant	Pavementc Overlay Memo
179	5/10/21	Philbrook/Identity Clark County	Comments
180	5/10/21	Applicant	Streeter & Grice Gorge Decisisions
181	5/10/21	Calvert/Horenstein	Comments
182	5/10/21	Applicant	Erick Staley Resume
183	5/10/21	Bradley Carlson	Comments
184	5/10/21	96 Letters in support	Comments
185	5/10/21	Applicant	Power Point Presentation
186	5/11/21	Greg Brown	Comments
187	5/11/21	Paull/Guinnett Masonry	Comments
188	5/11/21	Halle-Pahlisch Homes	Comments
189	5/11/21	Gregory Shaw	Comments
190	5/11/21	Gregory Shaw	County County Aggregate 1993
191	5/11/21	Gregory Shaw	Chelatchie Bluff Mineral Lands
192	5/11/21	CC Wetland/Habitat Review	Condition A-15 Revision
193	5/11/21	Friends of the Gorge	Comments (Friends Exhibits 53-56)
194	5/11/21	Karen Wood	Comments
195	5/12/21	Regan Fisher	Comments
196	5/12/21	Martin Fisher	Comments
197	5/12/21	Wilson/Vanport/Fire Sprinklers	Comments
198	5/13/21	Laurie Kerr	Comments
199	5/14/21	Kristin Price	Comments
200	5/14/21	Sherene Huntzinger	Comments
201	5/17/21	Julie Smith	Comments
202	5/18/21	Eric Johnson	Comments
203	5/19/21	Tim Attebery	Comments
204	5/21/21	Victoria Lasisi	Comments
205	5/23/21	Gorge Refuge Stewards	Comments
206	5/24/21	Friends of the Gorge	Exhibits 1-49
207	5/24/21	Friends of the Gorge	Grice Video #1 (Friends Exhibit 50)
208	5/24/21	Friends of the Gorge	Grice Video #2 (Friends Exhibit 51)
209	5/24/21	Friends of the Gorge	Grice Video #3 (Friends Exhibit 52)
210	5/24/21	Applicant	2018 County's Admin Records
211	5/24/21	Applicant	Water Line Admin Records
212	5/24/21	Jim Hutchison	Comments
213	5/26/21	Center for Biological Diversity	Comments
214	5/27/21	Bill McMillan	Comments
215	5/27/21	Friends of the Gorge	Friends Exhibits 57-92

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Development Services Division
1300 Franklin Street
Vancouver, WA 98666-9810

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
216	5/27/21	Friends of the Gorge	Truck Noise Video (Friends Exhibit 89)
217	5/27/21	Friends of the Gorge	Streeter Residence Mine Noise (Friends Exhibit 90)
218	5/27/21	Friends of the Gorge	Streeter Existing Noise Conditions (Friends Exhibit 91)
219	6/7/21	CC Land Use	Hearing Transcript May 10, 2021
220	6/7/21	CC Land Use	Hearing Presentation
221	6/9/21	CC Land Use	Affidavit Of Publication - The Columbian
222	6/9/21	CC Land Use	Affidavit of Publication - The Reflector
223	5/27/21	Gary Carpenter	Comments
224	6/19/21	Heather Gulling	Comments
225	6/27/21	Hilary Patterson	Comments
226	2/10/22	CC Land Use	Hearing Transcript May 11, 2021
227	2/10/22	CC Land Use	Hearing Transcript May 27, 2021
228	11/17/21	John and Joy Anderson	Comments
229	12/6/22	CC Land Use	Notice of Type III Hearing
230	12/6/22	CC Land Use	Affidavit of Mailing
231	12/7/22	Friends of the Gorge	Telegin Objection to January 26 hearing
232	12/15/22	Applicant	Response to Hearing Objection
233	12/19/22	Friends of the Gorge	Telegin Response to Applicants Objection
234	12/19/22	Hearing Examiner	Ruling on Hearing date/Rescheduling February 23
235	12/19/22	Michael Butler	Comments
236	12/23/22	Friends of the Gorge	Telegin Objection to February 23, 2023 hearing
237	12/27/22	Applicant	Response to Hearing Objection
238	12/27/22	Maren Calvert	Response to Hearing Objection
239	12/28/22	Friends of the Gorge	Telegin Response to Applicants Objection
240	1/10/23	CC Land Use/Friends	Final Continued Hearing Date
241	1/19/23	CC Land Use	Notice of Continued Hearing
242	1/19/23	CC Land Use	Affidavit of Mailing - Exhibit 240
243	1/19/23	Jerry Sauer	Comments
244	1/31/23	WDFW Habitat Program	Comments
245	2/8/23	Applicant	Peer Sound Study Review
246	2/21/23	John Cornelison	Comments
247	2/22/23	Therese Livella	Comments
248	2/22/23	Judith Sugg	Comments
249	2/22/23	Anna Cowen	Comments
250	2/22/23	Karen Edwards	Comments
251	2/22/23	Monte Garrett	Comments
252	2/22/23	Carolyn Eckel	Comments
253	2/22/23	Amy Roth	Comments
254	2/22/23	Abigail Corbet	Comments
255	2/22/23	Suzanne Patzer	Comments
256	2/22/23	Dianne Lamberty	Comments
257	2/22/23	Mary and Keith Goody	Comments
258	2/22/23	Susan Saul/Audubon Society	Comments
259	2/22/23	Chane Ek	Comments
260	2/22/23	Friends of the Gorge	Second Adam Jenkins Declaration
261	2/22/23	Friends of the Gorge	Jody Akers Declaration
262	2/22/23	Friends of the Gorge	Rachel Grice Declaration
263	2/22/23	Friends of the Gorge	Third Bill Weiler Declaration
264	2/22/23	Friends of the Gorge	Robert Roseen Declaration
265	2/22/23	Friends of the Gorge	Gravel Truck Crash Fatality Report
266	2/22/23	Friends of the Gorge	Washington State Patrol Gravel Truck Driver Rpt
267	2/22/23	Friends of the Gorge	Marc Bolt e-mail to James Naramore
268	2/22/23	Friends of the Gorge	Mitch Nickolds e-mail to Ahmad Qayoumi
269	2/22/23	Friends of the Gorge	Summary Judgment Motion Hearing
270	2/22/23	Friends of the Gorge	ZP#5, LLC Summary Judgment Motion Response
271	2/22/23	Friends of the Gorge	ZP#5, LLC Business Info
272	2/23/23	Basil Rotschy	Comments

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
273	2/23/23	Jim Crawford	Comments
274	2/25/23	Ann McLaughlin	Comments
275	2/27/23	Erin Allee	Dusty Truck Video
276	2/27/23	Erin Allee	Overtured Truck Picture
277	2/27/23	Friends of the Gorge	Friends Exhibits Cross-Reference List
278	2/27/23	Sherri Irish	Comments
279	2/27/23	Ann Foster/Friends of Clark County	Comments
280	2/27/23	Greg Flakus	Comments
281	2/27/23	Alex Post	Comments
282	2/28/23	Dave Pinkernell/Refuge Stewards	Testimony
283	2/28/23	Jim Hutchison	Comments
284	2/28/23	Robert Bernstein	Comments
285	2/28/23	Baylee Fox	Comments
286	3/1/23	Larry Keister	Comments
287	3/1/23	Tracey Stinchfield	Comments
288	3/1/23	Landau Associates	Review of BRC's May 2021 and CENSEO's Studies
289	3/1/23	Bryan Telegin	Notice of Substitution of Counsel
290	3/1/23	Gregory Shaw	Comments
291	3/1/23	Joshua Grice	Comments
292	3/1/23	Don Steinke	Comments
293	3/2/23	Andy Dryden	Comments
294	3/3/23	CC Land Use	Hearing Transcript
295	3/3/23	CC Land Use	Hearing Presentation
296	3/3/23	Cyndi Soliz	Comments
297	3/3/23	Peter Konneker	Comments
298	3/3/23	Karen Streeter	Hearing Statement
299	3/3/23	James Howsley	Notice of Change of Address
300	3/3/23	Sean Streeter	Comments
301	3/3/23	Friends of the Gorge	Declaration of Ross Tilghman
302	3/3/23	Friends of the Gorge	Adam Jenkins Hearing Presentation
303	3/3/23	Friends of the Gorge	Dr. Robert Roseen Hearing Presentation
304	3/10/23	Gregory Shaw	Gregory Shaw Submittal
305	3/10/23	Gregory Shaw	Gregory Shaw Submittal
306	3/8/23	Marguerite Kelsey	Comments
307	3/8/23	David and Ellen Solevad	Comments
308	3/8/23	John Kivlen	Comments
309	3/9/23	Friends of the Gorge	Telegin Letter
310	3/9/23	Friends of the Gorge	Columbian Article
311	3/9/23	Friends of the Gorge	Water Well Report
312	3/9/23	Friends of the Gorge	Storedahl SEPA Decision
313	3/9/23	Friends of the Gorge	Storedahl SEPA Scoping Report.
314	3/9/23	Friends of the Gorge	Allee Email
315	3/10/23	Miles Johnson/Columbia Riverkeeper	Comments
316	3/10/23	Jill DeVine	Comments
317	3/12/23	David Pinkernell	Hearing Testimony
318	3/12/23	Kiley Reese	Testimony
319	3/13/23	Friends of the Gorge	2023 Superior Court Order on Summary Judgment
320	3/13/23	Friends of the Gorge	Superior Court Summary Judgment Motion
321	3/13/23	Friends of the Gorge	Superior Court Summary Judgment Response
322	3/13/23	Friends of the Gorge	Baker Superior Court Declaration
323	3/13/23	Friends of the Gorge	Grice Superior Court Declaration
324	3/13/23	Friends of the Gorge	Superior Court Timeline
325	3/13/23	Friends of the Gorge	2021 Superior Court Ruling
326	3/13/23	Friends of the Gorge	2021 Superior Court Amended Final Order
327	3/13/23	Friends of the Gorge	Gorge Commission Norway Green Order
328	3/13/23	Friends of the Gorge	Nutter Sand & Gravel Permit Documents
329	3/13/23	Friends of the Gorge	Article June 2015 Crash

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
330	3/13/23	Friends of the Gorge	Article July 2015 Crash
331	3/13/23	Friends of the Gorge	Video July 2015 Crash
332	3/13/23	Friends of the Gorge	Grice E-mail
333	3/13/23	Friends of the Gorge	Notice of Substitution of Counsel
334	3/14/23	Cheryl Alexander	Comments
335	3/14/23	Lori Talley	Comments
336	3/14/23	Landau Associates	Additional Noise information/Hearing Response
337	3/14/23	Public	Opposition Comments
338	3/14/23	Mika Barrett	Comments
339	3/15/23	CC Development Engineering	Response on Crash History & Capacity Analysis
340	3/15/23	Philbrook/Identity Clark County	Comments
341	3/15/23	Matthew Condon	Comments
342	3/15/23	CC Land Use	Land Use Staff Response & Summary
343	3/15/23	Applicant	Rebuttal to Tilghman Photo (Page 8-Exhibit 206-Friends Exhibit 4)
344	3/15/23	Applicant	Certified Transcripton 3/1/2023 Continued Hearing
345	3/15/23	Applicant	Amended ZP#5 LLC Land Use Application
346	3/15/23	Applicant	Certified Transcripton 5-10-2021 LU Hearing
347	3/15/23	Applicant	Certified Transcripton 5-11-2021
348	3/15/23	Applicant	Certified Transcripton 5-27-2021
349	3/15/23	Applicant	Easement for Residence on SE 356
350	3/15/23	Applicant	ELS Report
351	3/15/23	Applicant	ELS Report - Anderson Determination WHR-2021-00313 - Referenced in ELS Report
352	3/15/23	Applicant	Erick Hedberg Resume
353	3/15/23	Applicant	Video Looking West then East - South Side of Old Evergreen Hwy
354	3/15/23	Applicant	Video Looking West then East near Jemtegaard
355	3/15/23	Applicant	Video Gibbons Creek - SE Sunset Valley Rd and Old Evergreen Hwy
356	3/15/23	Applicant	NV 5 Report
357	3/15/23	Applicant	NV 5 Report - Attachemnt C - Video
358	3/15/23	Applicant	Inter Notice Report - Sound levels of trucks at low speed
359	3/15/23	Applicant	Streeter Testimony
360	3/15/23	Applicant	Streeter Testimony - Video
361	3/15/23	Applicant	Train Counts
362	3/15/23	Applicant	Washougal Pit Wheel Wash
363	3/15/23	Applicant	WSDOT Aggregate Source Approval
364	3/15/23	Applicant	Yacolt Mountain Decision
365	3/15/23	Applicant	ELS - Critical Areas Report and Mitigation Plan 3-2023
366	3/15/23	Applicant	Applicant Response to Examiner Questions
367	3/15/23	Applicant	CENSEO Peer Review Report
368	3/15/23	Applicant	Kittelson Report
369	3/15/23	Applicant	BRC Acoustics Report
370	3/15/23	Edmond Murrell	Comments
371	3/15/23	Sean Streeter	Comments
372	3/15/23	Friends of the Gorge	Fugitive Road Dust Article
373	3/15/23	Friends of the Gorge	Washougal Water Plan System Update
374	3/15/23	Friends of the Gorge	Mitch Kneipp Email
375	3/15/23	Friends of the Gorge	Grice 2nd Declaration
376	3/15/23	Friends of the Gorge	Roseen 2nd Declaration
377	3/15/23	Friends of the Gorge	Jenkins 3rd Declaration
378	3/15/23	Friends of the Gorge	Weiler 4th Declaration
379	3/17/23	Friends of the Gorge	Telegin's Request Cross-exam or More Time
380		Friends of the Gorge	Traffic Video
381	3/17/23	Estuary Partnership	Response comments
382	3/21/23	CC Land Use	Decision - Motion to Allow Cross Examination

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
383	3/22/23	CC Land Use	Affidavit of Publication
384	3/23/23	Friends of the Gorge	6 Day Extension Request
385	3/23/23	Applicant	Extension Response
386	3/24/23	CC Land Use	Examiner Decision - 2nd Extension Request
387	3/27/23	Richard Dyrland	Comments
388	3/29/23	Gregory Shaw	Comments
389	3/29/23	Karen Streeter	Comments
390	3/29/23	Friends of the Gorge	Friends Transcript 05/2021 & 03/2023
391	3/29/23	Friends of the Gorge	2023 Zimmerly v. Gorge Commission Court Order
392	3/29/23	Friends of the Gorge	2023 ZP #5 Final Judgment
393	3/29/23	Friends of the Gorge	2023 Friends of Clark county Final Decision
394	3/29/23	Friends of the Gorge	1995 Achen Final Decision
395	3/29/23	Friends of the Gorge	2017 Zhou Gorge Permit Final Order
396	3/29/23	Friends of the Gorge	1996 Letter from Brian Litt to Rex Hapala
397	3/29/23	Friends of the Gorge	1996 Transcript of Agency Meeting
398	3/29/23	Friends of the Gorge	Gorge Commission Final Order
399	3/29/23	Friends of the Gorge	Emails from Richard Daviau
400	3/29/23	Friends of the Gorge	2022 emails from April Furth to Ted Vanegas
401	3/29/23	Friends of the Gorge	2021 emails from Mitch Nickolds
402	3/29/23	Friends of the Gorge	Declaration of Nathan Baker
403	3/29/23	Friends of the Gorge	Declaration of Steve McCoy
404	3/29/23	Friends of the Gorge	Declaration of Denise Lopez
405	3/29/23	Friends of the Gorge	Second Declaration of Ross Tilghman
406	3/29/23	Friends of the Gorge	Fourth Declaration of Adam Jenkins
407	3/29/23	Friends of the Gorge	Third Declaration of Robert Roseen
408	3/29/23	Friends of the Gorge	Fifth Declaration of Bill Weiler
409	3/29/23	Friends of the Gorge	Friends Land Use Brief
410	3/29/23	Applicant	BRC Rebuttal to Greenbusch Third Dec
411	3/29/23	Applicant	CENSEO Review and Response to Greenbusch Third Dec
412	3/29/23	Applicant	ELS Rebuttal to Roseen 2nd Dec and Weiler 4th Dec
413	3/29/23	Applicant	NV5 Response to 2nd Dec of Robert Rossen
414	3/29/23	Applicant	NV5 Fugitive Dust Rebuttal
415	3/29/23	Applicant	NV5 Site Visit Letter
416	3/29/23	Applicant	MacKay Sposito (Previously Olson) Water Service Response
417	3/29/23	Applicant	Kittelson Transportation Rebuttal
418	3/23/23	Friends of the Gorge	Reply to Applicant Reponse to Extension Request
419	4/12/23	Applicant	Applicant email on Reclamation Plan
420	4/12/23	Applicant	Reclamation and Explanation
421	4/12/23	Applicant	LT Hearings Examiner - SEPA Argument
422	4/12/23	Applicant	Applicant's Closing Argument - Land Use
423	4/12/23	Friends of the Gorge	2019 Copy of the Clark County National Scenic Area Ordinance
424	4/12/23	Friends of the Gorge	2023 Washington Court of Appeals Opinion
425	4/12/23	Friends of the Gorge	Friends' SEPA Brief
426	6/8/23	CC Land Use	Examiner Decision - Final Decision
427	6/8/23	CC Land Use	Affidavit of Mailing - Exhibit 426
428	6/22/23	Friends of the Gorge	Reconsideration Request
429	6/22/23	Applicant	Reconsideration Request
430	6/23/23	Friends of the Gorge	Motion to Strike applicant's Reconsideration
431	6/23/23	Friends of the Gorge	Baker Strike Declaration
432	6/26/23	Applicant	Response to Strike Motion
433	6/26/23	Friends of the Gorge	Baker 2nd Strike Declaration
434	6/27/23	Friends of the Gorge	Friends Supplemental Strike Memo
435	6/27/23	Friends of the Gorge	Baker 3rd Strike Declaration
436	6/27/23	Friends of the Gorge	Support of Motion to Strike
437	6/27/23	Friends of the Gorge	Baker 4th Strike Declaration
438	7/3/23	Friends of the Gorge	Notice of Errata in Reconsideration
439	7/6/23	Applicant	Response to Friends Reconsideration Request

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
440	8/4/23	CC Land Use	Examiner Decision OLR-2023-00077
441	8/4/23	CC Land Use	Examiner Decision OLR-2023-00080
442	8/4/23	CC Land Use	REVIED Examiner Decision SLR-2020-00009
443	8/4/23	CC Land Use	Affidavit of Mailing - Exhibit 440, 441, and 442

Copies of these exhibits can be viewed at:
Department of Community Development
Development Services Division
1300 Franklin Street
Vancouver, WA 98666-9810