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NO. 34128-0-II

THURSTON COUNTY, WASHINGTON, a municipal corporation and
political subdivision of the State of Washington, and BLACK HILLS
AUDUBON SOCIETY, a nonprofit corporation,

Appellants/Cross-Respondents,

v.

QUALITY ROCK PRODUCTS, INC., a Washington corporation, and
EUCON CORPORATION, an Idaho corporation

Respondents/Cross-Appellants.

BRIEF OF BLACK HILLS AUDUBON SOCIETY

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I. ASSIGNMENT OF ERRORS

1. The Superior Court erred in reversing the Thurston County Board of County Commissioners and re-instating a Hearing Examiner decision which approved a Special Use Permit by Quality Rock Products, Inc. for a gravel mine expansion adjacent to the Black River National Wildlife Refuge.

Issues Pertaining to Assignments of Error

1. Was the Hearing Examiner's decision granting the Special Use Permit to Quality Rock based on substantial evidence? (Assignment of Error No. 1).

2. Was the Hearing Examiner's decision granting the Special Use Permit to Quality Rock a clearly erroneous application of the law to the facts? (Assignment of Error No. 1).

II. STATEMENT OF THE CASE

Quality Rock Products, Inc. ("Quality Rock" or "QRP") currently owns and operates a 26-acre gravel mine in unincorporated Thurston County. QRP purchased the mine and the surrounding 125 acres in January of 2000. Administrative Record ("AR") at 335.¹

¹ The Clerk's Papers cite to the Administrative Record is CP 339.

Surrounding QRP's 151 acre site on three sides is the authorized boundary for the Black River Unit of the Nisqually National Wildlife Refuge. AR 1692 (see App. A). The Black River National Wildlife Refuge is managed by the United States Fish and Wildlife Service (USFW). See AR 506, 389. The USFW is charged with managing the refuge property so as to "maintain adequate water quantity and water quality to fulfill the mission of the System and the purposes of each Refuge." 16 U.S.C. § 668dd(a)(4)(f).

The Black River Refuge spans 3,800 acres.² AR 336. These lands have been identified for inclusion in the Nisqually National Wildlife Refuge because of the existing wetland system and habitat for migratory birds and fish, as well as many other species.³ USFW is actively acquiring properties along the Black River to preserve the existing wetland system and habitat for migratory birds and fish and other species. AR 336.

The Black River itself is west and down gradient of the QRP mine site. AR 346. The Black River corridor is one of the last large, intact,

² The authorized boundary of the Refuge is the area the USFW intends to purchase and include in the refuge system based on its high ecological value. As of 2002, the USFW has acquired 800 acres within the authorized boundary of the Black River Refuge. AR 336.

³ For example, The Oregon Spotted Frog, a state listed endangered species, has been observed within the Black River National Wildlife Refuge. AR 345; AR 969-70.

riparian systems in the Puget Sound area. AR 336. The fertile valley is valued as a pristine, peaceful location for canoeing, birdwatching, and observing wildlife. AR 336.

But the Black River National Wildlife Refuge is a fragile and already strained ecosystem. "Fish and wildlife habitat is impaired in various areas of the watershed due to low [river] flows, high [water] temperatures and low dissolved oxygen levels." AR 2765 (Dept. of Ecology).

Specifically, the Black River is listed as water quality impaired under Section 303(d) of the Clean Water Act. AR 346. This is due, in part, to low stream flows. In fact, because the river levels are so low, the Washington Department of Ecology ("Ecology") has closed the river to further appropriations each summer and fall from July 1 to October 31. Id.; WAC 173-522-050.

Moreover, scientists have recognized that much of the water in the river, especially during the critical summer and fall months, comes not from rainfall, but from groundwater. During these dry months, groundwater is the lifeblood of the river and the ecosystem it sustains. Groundwater seeps into the river directly or indirectly via nearby wetlands and creeks. Thus, Robert Mead with Thurston County's Ground Water Management Program warns,

"Low flows already impede fish migration within the Black River, and additional reductions of groundwater to the Black River will worsen the problem." AR 2765.

In August of 2000, QRP submitted an application for a six-fold increase in its newly acquired mine, expanding the current 26-acre pit to encompass 151 acres. See AR 1650, 1655 (aerial photo; App B hereto). See also AR 1817. In the County's Comprehensive Land Use Plan, only the 26 acres currently being used for mining are designated Mineral Resource Land of Long Term Significance.⁴ AR 55. In the zoning code, the entire 151-acre site is zoned Rural Residential Resource. AR 334.

QRP was required to obtain a Special Use Permit (SUP) from Thurston County for its proposed six-fold expansion. AR 334. Under the County Code, a SUP may be granted only if the project complies with the County's Comprehensive Plan policies. TCC 20.54.040. Further, the permit is authorized only if "a specific finding is made that the proposed special use is appropriate in the location for which it is proposed." Id. A project is not location appropriate if it will result in "substantial or undue" adverse effects

⁴ Under the Growth Management Act, The 26 designated acres enjoy some protection from encroaching uses. See RCW 36.70A.060(1)(a). The vast majority of the tract does not.

on, among other things, the “natural environment.” Id. The burden of proof to establish the absence of these adverse effects is on the applicant. Id.

QRP submitted its application, asking for approval not only of the 151 acre mine expansion in the midst of the Wildlife Refuge, but also for authorization to construct a large on-site concrete plant and asphalt recycling facilities, as well as installation and operation of a new asphalt hot mixing plant. AR 334. The project would produce as much as 750,000 tons of aggregate per year, three times the quantity currently produced. AR 336.

The QRP proposal would proceed in six phases. Id. The first three phases would include excavation above the groundwater table. The second three phases involve deeper excavation into the groundwater table, lowering the floor of the open mine 40 feet below the groundwater table. Id.

Groundwater would flow into this huge pit creating a 75-acre pit lake. Much of this water would be lost to the Black River. Nearly ten million gallons of water per year would be lost through evaporation from this artificial lake. AR 347. QRP’s proposal also uses at least 5,000 gallons of groundwater from the Black River aquifer every day for its mine operations (e.g., gravel washing, concrete and asphalt production and recycling, dust suppression and on-site domestic uses). AR 46, 346.

The same groundwater aquifer that would be impacted by the proposed mine expansion supplies water to the Black River. AR 346, 627. As the Hearing Examiner found based on QRP's own groundwater consultant, "Groundwater beneath the [proposed mining] site flows from east to west, away from Ashley Creek and neighboring wells but toward the Black River." AR 346. See also AR 2501.

As mentioned above, low water flows are a primary concern for the water quality and related habitat retention within the Black River corridor. Throughout the public hearings and comment periods associated with the proposal, "[c]oncern was raised that the proposal would further reduce water flows and thus exacerbate the water quality problems, particularly during the drier summer months when production would be at its peak. Suggestion was made that any groundwater monitoring plan explicitly address impacts of Black River flows." AR 346 (Hearing Examiner's first decision). These concerns were raised not only regarding flows directly to the Black River, but also to the wetlands between the Black River and the mine site, as well as the resulting impacts on habitat quality within the Black River National Wildlife Refuge. AR 336.

After a public hearing and comment period the County Hearing Examiner approved the SUP, in part, subject to conditions. Specifically, the Hearing Examiner did not approve the permit with respect to the later three phases of the project, those that would intrude into the groundwater aquifer. The Examiner acknowledged that there was inadequate evidence regarding potential impacts to the surrounding environment, and stated that the last three phases would be reconsidered after "further review, including detailed analysis of the impact of groundwater to the site, the aquifer and the Black River." AR 362.

Both QRP and Black Hills Audubon Society ("Audubon") appealed to the County Board of Commissioners. The Board agreed with the Hearing Examiner's conclusion that additional review was necessary on potential impacts to the surrounding environment. See AR 3223. The Commissioners recognized, though, that approval and development of the first three phases would inevitably create additional pressure for approval and development of the second three phases.⁵ (Plus, the first phases had the potential to directly

⁵ King County v. Washington State Boundary Review Bd. for King County, 122 Wn.2d 648, 664, 860 P.2d 1024 (1993) (recognizing institutional "inertia generated by initial government decisions" for a multi-stage project); WAC 197-11-060(4)(d) (requiring environmental review to consider precedential effect of initial approvals).

impact the Black River, too.) Thus, the Board concluded that instead of waiting, the missing analysis should be done prior to issuance of any portion of the permit. The Board remanded the case to the Hearing Examiner "for the purpose of conducting a detailed analysis of the impact to the groundwater, aquifer and the Black River."⁶ AR 3224.

After a second hearing and public comment period, wherein additional evidence was collected from the permit applicant, citizens and other experts, the Hearing Examiner approved QRP's full proposal, including the last three phases, subject to several conditions.⁷ See AR 36. In reaching this decision the Examiner made additional findings of fact, but none that directly addressed potential impacts on the Black River.

Audubon again appealed the Examiner's decision to the Board of Commissioners. The Board concluded that despite the additional information

⁶ The Board also remanded for additional analysis of traffic issues, the continued application of the original mining permits issued and the extent to which the site was designated a mineral resource land. These issues are not on appeal.

⁷ In his second decision, the Hearing Examiner adopted all of the conclusions of law and the majority of his findings of fact from the first hearing. Findings of Fact 17, 19, 20 and 22 were not adopted in the Examiner's second decision. The Examiner adopted Finding of Fact 6 and 18 in his second decision with minor modifications. The only findings of fact modified or excluded from the second decision were related to traffic.

gathered in the Hearing Examiner's second hearing, the evidence still did not adequately address impacts "on the surrounding environment" including the Black River. AR 3231.

The Board considered the Examiner's findings and stated "[i]t is clear from the hearing examiner's own findings that predictions on impacts to groundwater are only predictions and the actual effects on site will be and can be quite different[]." AR 3231. Because QRP had not established that the expansion would avoid "substantial or undue" adverse effects to the highly vulnerable and ecologically valuable Black River National Wildlife Refuge, the Board denied the SUP application in its entirety. AR 3232; TCC 20.54.040.

Based on the Board's permit denial, QRP filed an appeal to the Thurston County Superior Court under the Land Use Petition Act (LUPA), Ch. 36.70C RCW.

Audubon and the County then filed this appeal of the Superior Court's decision. CP 10, 17.

III. SUMMARY OF ARGUMENT⁸

In his first decision, the Hearing Examiner made Findings of Fact that acknowledged the ecological value and importance of the Black River Refuge. AR 336, 346-47. The Examiner's first decision recognized that there was inadequate evidence to support finding that the mine would not harm the Black River and associated aquifers. While he approved the permit for the entire project, he at least required additional detailed analysis of the proposed project's impacts to the Black River prior to excavating the pit into the groundwater aquifer. AR 362. The Commissioners concluded the study had to precede issuance of the permit and remanded to give QRP the chance to provide that missing information. Thus, while the Examiner and Commissioners disagreed about the timing of the additional study, all agreed that important analysis was missing and that QRP had the burden to produce it.

But QRP failed to provide the missing information during the remand and the Examiner failed to address the Black River issues with any new findings. See AR 36. The detailed study required by the Examiner's first

⁸ For purposes of this appeal, Audubon limits its argument to water quantity and water quality impacts on the Black River and related impacts to the surrounding environment.

decision (and the Commissioner's first appeal decision) still was missing. Nonetheless, the Examiner granted the special use permit to QRP. This decision was not based on sufficient evidence, and the Examiner's application of the law to the facts of the case was clearly erroneous.

The findings of fact and evidence used to substantiate relevant findings in the Examiner's second decision insufficiently addressed the requirement to conduct a detailed analysis of the impact of groundwater to the Black River. The water quantity and quality impacts of the proposal on the Black River, its associated wetlands, and resulting impacts to the Black River National Wildlife Refuge are still unknown based on the evidence submitted by the applicant.

The County Code imposes the burden of proof on the applicant to demonstrate compliance with the Zoning Code criteria. TCC 20.54.040. The Code requires that the applicant establish an absence of "substantial and undue" impacts to the natural environment, as well as compliance with the County Comprehensive Plan, prior to issuance of an SUP. *Id.* QRP did not provide information from which the Hearing Examiner could conclude that there would be no "substantial or undue" environmental impacts to the Black River corridor. To the contrary, the evidence supports finding that substantial

and undue environmental impacts would result from QRP's proposal, making the expansion project inappropriate for the proposed location.

Furthermore, the Hearing Examiner did not make findings of fact that establish consistency between the County Comprehensive Plan and the proposal as required by TCC 20.54.040. Among other things, the Comprehensive Plan's policies regarding protection of groundwater aquifers, fish and wildlife, and water quality on adjacent properties are not satisfied based on the Examiner's findings.

The Hearing Examiner's decision was not based on substantial evidence, and was a clearly erroneous application of the law to the facts. The Commissioners correctly reversed the Hearing Examiner's decision and denied QRP's permit.

IV. ARGUMENT

A. Standard of Review

Under LUPA, this Court stands in the shoes of the superior court and reviews the decision of the local jurisdiction's body or officer with the highest level of authority to make the determination. RCW 36.70C.120; Lakeside Industries v. Thurston County, 119 Wn. App. 886, 83 P.3d 433 (2004). In this case, the Hearing Examiner made findings of fact. These findings were

undisturbed by the Board of County Commissioners in its review and reversal of the Hearing Examiner's decision.

Audubon bears the burden of meeting one of six standards for granting relief as set forth in RCW 36.70C.130(1). Two of these standards are applicable under the facts of this case:

(c) The [hearing examiner's] land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The [hearing examiner's] land use decision is a clearly erroneous application of the law to the facts;

RCW 36.70C.130.

Put affirmatively, the Board of County Commissioners properly denied the QRP application because insubstantial evidence supported the Hearing Examiner's key findings of fact, and because the Examiner's application of the law to the facts was clearly erroneous. The Board was not required to give deference to the Hearing Examiner's legal conclusions. Whidbey Environmental Action Network v. Island County, 122 Wn. App. 156, 164, 93 P.3d 885 (2004).

The specific issues for this Court to decide are (1) whether substantial evidence supports the Hearing Examiner's conclusion that the mining expansion will not have a "substantial and undue" impact on the Black River

and the surrounding area, and (2) whether the Examiner erroneously applied the law to the facts of the case because the project did not satisfy the County Special Use Permit requirements, including consistency with Comprehensive Plan policies. See TCC 20.54.040.

This Court reviews findings of fact under the substantial evidence standard and conclusions of law *de novo*. Timberlake Christian Fellowship v. King County, 114 Wn. App. 174, 180, 61 P.3d 332 (2002). "Substantial evidence exists when the evidence in the record is of sufficient quantity to persuade a fair-minded rational person of the truth of the finding." Benchmark Land Co. v. City of Battle Ground, 146 Wn.2d 685, 694, 49 P.3d 860 (2002). A decision is clearly erroneous when the court is left with the definite and firm conviction that a mistake has been made. Boehm v. City of Vancouver, 111 Wn. App. 711, 716, 47 P.3d 137 (2002).

B. Neither the Examiner's Findings Nor Substantial Evidence in the Record Supports the Examiner's Approval of a Special Use Permit for QRP

The Examiner's decision granting the Special Use Permit was not supported by substantial evidence. This is apparent by examining the

Examiner's specific findings and the evidence before the Examiner when he made his second decision.⁹

1. The Examiner Failed to Enter Findings of Fact on the Critical Issue of the Project's Potential to the Black River and its Ecosystem
 - a. Hearing Examiner's Must Make Adequate Findings of Fact

A hearing examiner, like a trial judge or other fact finding body, must enter findings of fact and conclusions of law to support his or her decision. Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 35-6, 873 P.2d 498 (1994). The findings of fact provide the factual basis for the conclusions of law. Parkridge v. City of Seattle, 89 Wn.2d 454, 464, 573 P.2d 359 (1978). If the fact finder fails to find the facts that support the legal conclusions, the decision must be vacated. Weyerhaeuser, 124 Wn.2d at 28.

Moreover, findings of fact may not be conclusory. They must demonstrate how the fact-finder resolved competing factual evidence

⁹ The Examiner's first decision concluded that further analysis was required to assess potential impacts from the proposed project on the Black River. See AR 362. This condition was not appealed by QRP. Nor did QRP appeal the Board's decision requiring this analysis prior to deciding whether to approve the permit. Thus, QRP cannot argue that evidence before the Examiner in his first decision was substantial enough to warrant issuance of an SUP. Only additional evidence submitted to the Examiner on remand could have adequately supplemented the record to establish an absence of impact on the Black River and surrounding natural environment.

submitted during the hearing. See Sisley v. San Juan Cy., 89 Wn.2d 78, 85-86, 569 P.2d 712 (1977). Simply reciting or summarizing the evidence is not sufficient. The findings must reveal the fact finders own thought process. Johnson v. City of Mount Vernon, 37 Wn. App. 214, 221, 679 P.2d 405 (1984).

b. The Examiner Failed to Enter the Necessary Findings

In his first decision, the Examiner refused to approve the SUP for the second three phases of the project: those phases that would most directly impact the groundwater aquifer connecting the mine site and the Black River. He did this because of valid concerns, and evidence on the record, that substantial and undue impacts could result to the Black River and the surrounding environment from alteration of the quality or quantity of water making its way from the mine to the Black River. Thus, the Examiner required that prior to embarking on the second three phases, the applicant must conduct “further review, including detailed analysis of the impact of groundwater to the site, the aquifer and the Black River.” AR 362.

In the first administrative appeal, the Board remanded the case to the Hearing Examiner requiring that this further review be conducted sooner, rather than later. Thus, it concluded that prior to issuance of any portion of

the permit, a “detailed analysis of the impact of groundwater to the site, the aquifer and the Black River” must be completed. AR 3224.

Despite a second open record hearing, this detailed analysis was not adequately completed, supporting the Board’s ultimate denial of QRP’s expansion proposal.¹⁰

The Hearing Examiner’s second decision does not resolve any uncertainty with regard to the project’s groundwater impacts and the consequences of those impacts to the Black River and its surrounding natural environment. In particular, the Examiner’s second decision does not make any new findings of fact related to water quantity or quality impacts on the Black River.

The second decision mentions the Black River three times. The first and second references only emphasize the necessity of assessing impacts to the Black River: “The groundwater from the mine flows toward the Black

¹⁰ Significantly, the Board denied QRP’s permit application as to all six phases of the proposal. The evidence was insufficient to assess impacts on water quantity and quality for any of the six phases. Also, approval of the first three phases could inappropriately facilitate approval for the later three, even if impacts were noted. King County, 122 Wn.2d at 664. Furthermore, evidence did not address the potential for the proposal to have substantial adverse impacts throughout the expansion operation -- not just the later three phases. Therefore, the Board could not approve the project in pieces where the impacts were likely and their scope unknown.

River” (AR 41); “Downgradient, at the Black River, the groundwater table rises to meet the river” (AR 42).

At first glance, the third reference to the Black River appears as though it might shed some light on potential impacts from the creation of the 75-acre pit lake. Finding of Fact 16 states: “The [computer] program GFLOW2000 was used to evaluate the effect of the pit lake and the expansion on groundwater levels in nearby wells and on groundwater discharge to the Black River Valley.” AR 44. This finding stops short of stating any findings regarding impacts west of the mine. In particular, the Examiner never finds (based on the GFLOW2000 computer model or anything else) that the project will not adversely effect the Black River and the related groundwater system.

Indeed, the remainder of this finding (and all other factual findings related to water issues) address potential groundwater impacts on the EAST side of the site, towards Ashley Creek. AR 41-46. They do not pertain to potential impacts on the WEST side of the site where the Black River is located and where the groundwater from the site flows.

Predictions for changes in groundwater levels east of the pit lake are up to 1.7 feet. AR 2507. There was no finding by the Examiner regarding

the significance of an almost two-foot reduction in groundwater levels on water levels in the Black River or associated wetlands during the dry summer and early fall months. See AR 44.

Furthermore, this finding relates only to the effect of the pit lake, not the constant use of water on a daily basis over the next two decades for operational needs of the mine. See infra at p. 22.. Thus, no findings of fact even mention water quantity or quality impacts during the operational phases of the QRP proposal.

In summary, the Hearing Examiner first acknowledges that: (1) the Black River corridor is a valuable ecological area, is particularly susceptible to changes in water quality and quantity, and must be closely protected; AR 336, (2) groundwater from the proposed site flows west, toward the Black River; AR 346, and (3) the impacts of the project on groundwater flow to the Black River should be studied in detail before the second three phases of the project (that will dig into the groundwater aquifer) are allowed to proceed. AR 362. But, in the second decision, the Examiner looks only at new evidence on impacts to Ashley Creek, a waterway that crosses the northeast

corner of the project site and never addresses the project's impacts on the wetlands and Black River west of the site.¹¹

The Examiner failed to fulfill the requirements of law that demand adequate findings of fact. Weyerhaeuser, 124 Wn.2d at 35. He also failed to comply with the Board's order to assure a detailed analysis of impacts to the Black River was completed and to use that analysis in making his decision. The Hearing Examiner's factual findings do not provide substantial support for his issuance of the SUP. The Board of County Commissioners were correct to reverse the Examiner's decision. The Superior Court erred in concluding otherwise.

- c. Evidence relied on by the Examiner in his second decision was not substantial and does not support issuance of the SUP

Even if the Examiner's findings are somehow construed to include determinations on the critical Black River related issues, those findings could

¹¹ Ashley Creek is an important waterway in the consideration of water quality and quantity impacts because it is a tributary to the Black River. However, Ashley Creek is not the Black River, and an analysis of impacts to the Black River was required by the Board and acknowledged as necessary by the Examiner. A detailed analysis of Ashley Creek is inadequate to satisfy concerns regarding impacts to the Black River and its environs. Ashley Creek is upgradient of the mine; the Black River is downgradient and is in the direction of the groundwater flow. Thus, changes in the aquifer's water quality and quantity will more directly affect the Black River.

not be sustained because they would not be based on substantial evidence in the record.

This section reviews the record to assess whether the Examiner could have found that the applicant met its burden of proving the project would not adversely impact the Black River and its environs. This analysis considers water quantity and quality issues separately, and for each issue, first provides background and then looks at how the record addresses (or fails to address) these issues.

The conclusion reached through this analysis is that the Examiner had it right the first time and the Board had it right both times. There simply is not enough information in the record to adequately assess the likely impacts of the proposed mine expansion to the water quality or quantity in the Black River corridor.

(1) Water quantity concerns

As evidenced throughout the record, Thurston County, Audubon, numerous State and Federal agencies, and citizens are justified in their concern that QRP's expanded operation and subsequent pit lake may have adverse impacts on the quantity of water available for wetlands and the Black River. The Black River is a very vulnerable river in a fragile and highly

valuable watershed. The river is listed as impaired by the Department under § 303 of the Clean Water Act. AR 346. The river's vulnerability is based, in part, on low stream flows. Id.

Water quantity impacts in this case arise in the context of (1) QRP's operational use of water for mining and related activities, and (2) evaporation of water from the resulting pit lake.

(a) Operational uses

QRP obtains the water it uses for mining operations from a single well on site that draws from an underground aquifer that is hydraulically connected to the Black River. CR 2679, CR 1388-389. The Hearing Examiner made a specific finding of fact that the groundwater beneath the site flows toward the Black River. AR 346. Thus, the amount of groundwater withdrawn (or evaporated) from the mine site will impact the amount of groundwater flowing towards and recharging the river.

QRP's busiest mining season is during the summer months, which unfortunately coincides with the lowest levels of water in the Black River. VR at 173-184 (11/13/02). In 2001, QRP produced approximately 3,400 tons of aggregate per day during peak season summer months and between

250,000 and 400,000 tons annually. CR 599, VR at 169 (11/13/02); VR at 7 (11/19/01).

Similarly, under the proposed plan, QRP proposes to produce as much as 750,000 tons of aggregate annually; potentially 10,200 tons per day during the summer peak season. AR 336. The anticipated summer peaks would be five times greater than an average day.

On average, QRP is supposed to be limited to “only” 5,000 gallons of water per day from its on-site well.¹² RCW 90.44.050. Five thousand gallons of water can wash approximately 685 tons per day, or 250,000 tons per year of aggregate. AR 46, 2680. QRP has typically produced at least this amount of rock in its current 26-acre operation. VR at 7 (11/19/01). Thus, QRP is already at the edge of its permissible water withdrawals and probably exceeds 5,000 gallons a day during peak summer months.

Moreover, QRP uses water not just for washing gravel, but also to suppress dust on site and on roads used for transporting product, and for on-site employee needs. AR 2681. The likelihood of excessive water withdrawals under current conditions is manifest. AR 2681.

¹² Under RCW 90.44.050, one well per lot may be used for industrial water use in the amount of 5,000 gallons per day without requiring a water right or use permit from the State.

Under the proposed project, QRP's water needs will expand dramatically. Annual production would triple and peak summer production could increase five-fold. Water use for gravel washing would similarly increase. Moreover, the proposal includes elements that will generate significant new water demands, i.e., water for the processing and recycling of asphalt and concrete. Thus, a key concern for Audubon and the County has been how the mine proposes to more than triple its summer water consumption, yet retain a 5,000 gallon per day limit on water usage.

- i) Lack of evidence of new water withdrawals

Despite these well-documented concerns, QRP failed to provide a meaningful response. There is no substantial evidence in the record to support a finding (if one had been made) that the project will not adversely impact the Black River.

First, the record does not reveal the impacts on water quantity from operational water use because QRP did not disclose how much total water they will need for their proposed operation. Nominally, QRP is limited, both by RCW 90.44.050 and Condition W of the Examiner's second decision, to using 5,000 gallons of water per day. AR 59. This "limitation" is not an answer to the question of potential impacts for several reasons.

The overwhelming evidence establishes that QRP's proposed operation will require well over 5,000 gallons of water per day. With its current 250,000 tons per year production, QRP's operation already uses its entire water allotment. Proposed operations are up to three times current operating levels and would add new accessory uses such as asphalt and concrete recycling that would demand additional water. Water needs for dust suppression and employee use would also rise with increased production and additional truck trips to transport product off-site.

So why plan a mining operation that demands more water than is permitted? Either QRP intends to find water off site to meet its production needs or it plans to avoid or alter the 5,000 gallon on-site limit.

QRP is likely to respond that it could opt to go off-site for its water needs that exceed its 5,000 gallon a day limit. The question this statement begs is, "what is off-site?" The obvious scenarios is for QRP to utilize another nearby well -- one that would also draw from the groundwater feeding the Black River.¹³

¹³ Condition W of the Examiner's decision does not address the ability of QRP to utilize "off site" water that also draws from the aquifer feeding the Black River. AR 24.

For example, QRP has recently acquired Hard Rock Mine, a gravel mine adjacent to the proposed mine expansion. There is a well at Hard Rock Mine that may be used by QRP for withdrawals up to 5,000 gallons per day. AR 2764; RCW 90.44.050. This well draws from the same groundwater aquifer that feeds the Black River. AR 2764. The use of this well would likely double impacts to the Black River. Furthermore, even the full use of a second “exempt well” would not allow QRP to fully meet its water needs to produce 750,000 tons of aggregate per year.¹⁴

Thus, the record clearly is deficient for supporting a finding (if one had been made) that this project will not adversely impact groundwater and the Black River. Before even reaching the issue of how water withdrawals might impact those resources, the record must start with an accurate description of how much water will be withdrawn and from where. This

¹⁴ QRP cannot now propose trucking in water from off-site because the impacts of that water supply arrangement are not part of the proposal presented to the County and those impacts have not been assessed. Such a proposal would have its own potential impacts on groundwater, nearby wells, and the Black River, none of which has been evaluated. Further, no one has estimated the number and frequency of truck trips and the impacts of those trucks on traffic issues and generation of dust. While traffic and air quality were originally issues of concern in this case, they have been laid to rest with studies that have considered air and traffic impacts based on on-site production and use of water for dust suppression. If these factors change, the entire analysis changes.

fundamental data remains missing. Without it, no meaningful analysis of the project's water quantity impact could be made.

Before leaving this issue, the Court should be aware that QRP may meet its heightened water demands simply by failing to comply with the 5,000 gallon per day limit. QRP's shoddy regulatory compliance history was the subject of considerable evidence throughout the hearings. AR 339, 351, 938. The Washington Department of Natural Resources noted that QRP had several permit violations including excavating outside the permitted area; insufficient erosion control; inadequate wetland protection; and improper handling of waste. AR 2230, et seq.; AR 1818, et seq. Ecology also cited QRP for inadequate protection of water quality from turbid and contaminated stormwater discharges. CR 2337.¹⁵ Id.

While these violations are not specifically at issue on appeal, they reinforce the necessity of having a strong factual basis and concrete rationale for ensuring enforcement the 5,000 gallon limitation. No such factual record exists. The violations also reflect the likelihood that enforcement will be

¹⁵ Evidence in the record also supports the conclusion that QRP consistently violates its 5,000 gallon limit for on-site water consumption. Five thousand gallons of water can produce approximately 685 tons of concrete per day. (This includes recycled water usage.) QRP produced 400,000 tons of rock in 2001, over 1,000 tons per day on average. VR 169 (11/13/2002).

necessary to ensure compliance. But it is wholly uncertain from the record whether the resources exist for ongoing monitoring and enforcement of the QRP operations generally and its water withdrawals, in particular.

- ii) Lack of analysis of impacts of water withdrawals on the Black River and environs

Even if there were a clear description of where and how much water QRP would withdraw from the Black River groundwater system, the next step would be to assess the impact of those withdrawals on those resources. But that impact assessment was missing, too.

The first step in the impact assessment would be to assess the impacts of the current withdrawals. Yet there is no baseline study of the water quantity (or quality impacts) from QRP's existing operations. A baseline study is an essential foundation for determining how further withdrawals would affect the Black River National Wildlife Refuge.

It is entirely feasible that use of 5,000 gallons per day has caused, and is currently causing, substantial and undue impacts on the Black River, contributing to its listing as an impaired waterway under the CWA. But because QRP is reaching the limits of its current 26-acre mining operation,

By approving this expansion, the Examiner is essentially allowing QRP to continue to detrimentally impact an area that might otherwise be allowed to recover with decreased water demand on site. These impacts have not been considered.

Then, as if to highlight the deficiencies of meetings it burden of proof, QRP failed to provide any analysis of the impact of the proposed additional withdrawals on the Black River and its associated groundwater and wetlands. Understandably, QRP's analysis addressed impacts on domestic wells east of the mine. But inexplicably, the analysis failed to also assess impacts on groundwater, wetlands, and the Black River west of the site. See AR 2492-509.

QRP did not address this issue either in the context of average annual impact nor the critical issue of impact during summer when production and water withdrawals peak and Black River water levels are precariously low. The peak use of water for the mine operation coincides with the most vulnerable time for the Black River causing losses "when the river most needs water." AR 2181. The specific impacts during the summer months have not been assessed.

The Examiner did not have the evidence to determine what the total water needs would be for the QRP proposal and did not have the necessary information to determine how much of those total water needs would be met by groundwater feeding the Black River. Without this information, it is impossible to adequately assess substantial adverse impacts on the Black River and the surrounding fish and wildlife habitat.

(c) Lake evaporation

Beyond these proposed operational uses and impacts, the 75-acre pit lake that will result from this mining expansion will lose water from evaporation. The pit lake will be created by mining down approximately 40 feet into the groundwater table. Groundwater will seep and flow into the pit, creating a 75-acre lake.

The open pit lake will result in the loss of approximately 9.5 million gallons of water per year through evaporation. CR 347. This is water that was previously underground and would not evaporate.

It is uncontroverted that evaporation of 9.5 million gallons of water per year will result in the loss of groundwater recharge to the Black River. CR 2507. The question is only how much will this impact the Black River. Based on flawed estimates, QRP predicts the evaporation of enough water

to lower the aquifer two feet and a five to nine percent reduction in velocity of groundwater flow beneath the mine exclusively due to evaporation from the pit lake. AR 44, 2507. A reduction of almost ten percent in groundwater flow to the already critically impaired Black River is not at all insignificant. Furthermore, this estimate is just that -- an estimate. The estimate is not based on any site specific data, and the assumptions used for PGG's calculation appears to be flawed and misleading.

QRP's consultants (PGG) calculates the change of groundwater recharge at .032 cfs based on the difference in evapotranspiration rates between the proposed pit lake and a forested landscape. AR 2504. A forested landscape has a relatively high evapotranspiration rate because the heavy vegetation prevents water from reaching the groundwater aquifer as it is used by the trees and vegetation. A forested landscape would have a much higher evapotranspiration rate than the "logged and [] basically clear" condition that presently exists on the mine site. AR 335 (Hearing Examiner's first decision). Thus, the difference between the pit lake's evapotranspiration rate and a forested surface is much less than the difference between the pit lake and the current cleared conditions.

The changes calculated by PGG, therefore, do not reflect the much greater reduction in groundwater recharge that will result compared to current conditions. Now, virtually all precipitation is able to permeate into the ground and percolate into the groundwater aquifer that feeds the Black River. Little is taken of by vegetation on-site and lost through that mechanism. In contrast, the pit lake will be directly causing a loss of 9.5 million gallons from the aquifer. QRP's consultants never assessed the impact of this magnitude of groundwater loss on the Black River.

Furthermore, QRP's assessment was based only on predictions using modeling, not on any site specific study. AR 2504. PGG acknowledged that its assumptions may have resulted in significant inaccuracies. PGG stated that "the magnitude of water level changes may be as much as twice that" estimated. AR 2507. Most importantly, PGG itself acknowledged it had not taken the next step to determine the impact of any lost groundwater recharge on groundwater levels. Wildrick speculated that the impact might be as much as five feet but he candidly acknowledged he had not done the analysis to support that. VR at 156 (11/13/02).

The Examiner himself acknowledged some of the uncertainty when he noted that the magnitude of predicted water level changes may be double QRP's predictions. AR 45.

QRP attempted to minimize the significance of this lost groundwater recharge by characterizing it as "temporary." But QRP plans to mine within the aquifer for ten years. Reduced flows to the Black River even for a fraction of this time could cause significant and irreversible damage to the Black River and the surrounding habitat.

Considering the misleading calculation of evapotranspiration rate changes and the clearly acknowledged uncertainty in PGG's predictions, the evidence is wholly insufficient to determine an absence of substantial or undue impacts to water quantity in the Black River.

(2) Water quality concerns

The proposal's impacts on water quality in the Black River also was given short shrift by QRP and it failed to meet its burden of proof on this issue, too. Water quality may be adversely affected by reduced water quantity, increased turbidity, changes in water temperature, reduced dissolved oxygen and by new additives in runoff produced by the mine. AR 2341-2363, 2765. These problems already plague the Black River and QRP's

proposed mine expansion will only exacerbate its impaired quality. “Black River exceeds water quality standards for dissolved oxygen and temperature during the dry season. Further reduction in quantity of water available to the [Black River] will increase water quality problems.” AR 2765 (Department of Ecology denial of water right appropriation at Hard Rock Mine).

Reductions in the quantity of groundwater leads to increases in water temperature and reductions in dissolved oxygen. AR 2181, 2765. The Department of Ecology has denied further appropriations of water from this specific aquifer specifically because of adverse impacts that “will” result in the Black River water quality.¹⁶ AR 2765.

There are also potential additives from the mine that would adversely impact the Black River water quality. The Hearing Examiner recognized that the risk of groundwater contamination “increases for excavation within an aquifer,” and that “[c]oncrete batch plants cause the most significant risks to groundwater quality, as well as petroleum leaks and spills caused by equipment fueling, maintenance and washing. The process waters from

¹⁶ “The appropriation will be detrimental to the public welfare by increasing the number of days each year that base flows are not met, by decreasing water quality, and by further impairing fish habitat.” AR 2764.

concrete batch plants have high pH levels and can contain cement additives.”¹⁷ AR 346.

As with the water quantity issues, QRP has done no study to assess the mine expansion’s impact on the Black River corridor. Instead, QRP consultants acknowledged that it had “not addressed the water quality of the Black River.” VR at 80 (11/13/02). But there is evidence regarding the inevitability of spills and the adverse consequences to the environment, AR 971; the likelihood of "serious sedimentation runoff and degradation of salmon spawning and rearing habitats," AR 1898; and potential for pollutants to leach into groundwater and reach the refuge, AR 970; 1082.

QRP’s consultants also failed to assess the potential for mining into an aquifer to "breach the hydrological barriers between different aquifers . . . potentially affecting water quality or water levels." AR 2342, 2508. The County has identified this risk as "significant." AR 2342.

The studies submitted by QRP (and relied on by the Examiner) do not consider downgradient impacts and therefore would not have supported a

¹⁷ “Concrete batch plants, especially if there is any form of discharge, would require a high degree of regulatory oversight to avoid groundwater quality degradation.” AR 2342 (Thurston County Report on Effects of Gravel Mining, 1995). “That petroleum leaks and spills are a problem is clear from Department of Ecology incident reports.” AR 2342.

Hearing Examiner finding on this issue, even if such a finding had been made. No downgradient test wells were utilized to draw conclusions about potential effects on water quality from surface or groundwater traveling from the mine to the Black River. See AR 2508.

Another issue ignored by QRP's consultants is the evidence regarding wood waste on the northwest portion of the mine site and the potential for the expanded mining to facilitate this waste leaching and contaminating the aquifer. AR 1357.

The record also does not consider the cumulative effects of water quantity and water quality impacts. How will reduction in water quantity trigger water quality impacts? Does the combination of reduction in water quantity, when coupled with warmer groundwater and possibly contaminated surface water have greater or unanticipated impacts on the river, surrounding wetlands, and the plants and animals that depend on them? These issues are left unaddressed by QRP and ignored by the Hearing Examiner.

QRP also failed to address the exacerbation of water quality impacts during peak season operations. The animals and plants dependent on the Black River and its wetlands already are under greatest stress in the dry summer and early fall months. What is the impact of water quality

degradation during this critical season? How do the water quality and water quantity impacts combined to impact the ecosystem? None of the cumulative impacts have been assessed by QRP or its consultants. The record is silent on these critical issues.

In sum, the Examiner's record does not contain substantial evidence to support findings (if they had been made) that QRP had met its burden to demonstrate a lack of substantial adverse impacts on the Black River and its environs. The evidence must establish an absence of "substantial or undue adverse impacts" on the natural environment. TCC 20.54.040. Instead, the evidence raised numerous red flags, none of which have been adequately resolved by the evidence before the Hearing Examiner. The County Commissioners correctly concluded the permit could not be granted based on this inadequate record. The Superior Court erred in concluding otherwise.

C. The Hearing Examiner's Decision was a Clearly Erroneous Application of Law to the Facts of this Case

Under the Thurston County Code, certain proposed uses of land require a "special use permit." A special use permit is required where a project, "because of [its] special impact or unique characteristics, can have a substantial adverse impact upon or be incompatible with other uses of land." TCC 20.54.010. "Such uses may be allowed to locate within given

districts only through the review process of the special use permit and under the controls, limitations and regulations of such permits." Id.

QRP is required to obtain a special use permit for its proposed mining expansion because of its potential impact on the unique environment surrounding the mine. Because of the heavy industrial use being proposed and the fragile ecosystem that may be impacted, it is essential that the impacts of this operation be assessed prior to permit approval. Both the Examiner's and Board's decisions have recognized this need. The Board further explained that if these impacts are overlooked or inadequately mitigated, the harm to the adjacent refuge may be immediate and irreparable. See AR 3223.

In addressing compliance with the County Code, this Court should consider two specific requirements of TCC 20.54.040. The first requires that the Examiner make a finding that the proposed project is locationally appropriate. The second requires that the decision comply with the Comprehensive Plan. This section discusses the Examiner's failure to correctly apply both of these requirements.

1. QRP's proposal is not locationally appropriate under TCC 20.54.040

Special Use permits may only be approved where "a specific finding is made that the proposed special use is appropriate in the location for which

it is proposed." TCC 20.54.040 (see attached App. C). Such a finding must be based on evidence that "the proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare." Id.

Consistent with these regulations, the Examiner recognized the need to conduct "a detailed analysis of the impact to the groundwater, aquifer and the Black River" in his first decision. AR 362. The Board required that this analysis take place prior to issuance of any portion of the permit "because if there are problems that can't be mitigated it may alter the entire approval of the project which should be done up front and not several years down the road." AR 3224.

Thus, in his second decision, the Hearing Examiner was required to make specific findings that the proposed mine expansion would not result in substantial or undue adverse effects on the groundwater, aquifer and Black River adjacent to the proposed mine location. The Hearing Examiner did not make such findings, but nonetheless concluded that his approval of the permit was consistent with the requirements of TCC 20.54.040 and the relevant Comprehensive Plan policies.

As discussed above, the Examiner made numerous new findings of fact regarding potential impacts to the groundwater under Ashley Creek, east of the mine. However, no new site-specific evidence was submitted and no new findings of fact were entered by the Examiner establishing an absence of substantial or undue adverse impacts to groundwater flowing to the Black River, west of the mine. See AR 2492.

The Hearing Examiner lacked factual support for his conclusion that the mine expansion was locationally appropriate.

In his Conclusion of Law 10,¹⁸ the Examiner concluded that:

Although the proposal would have impacts on adjacent property, neighborhood character, natural environment and traffic conditions, such impacts would not be “substantial” or “undue” according to the evidence that was submitted. The neighborhood character is already defined as including gravel mining operations....Although the amount of traffic would increase, the increase would fall within acceptable LOS standards. The proposal would comply with state air quality standards.... The noise generated by increased truck traffic would not exceed federal guidelines, and would represent only a moderate increase over existing conditions.

AR 359 (emphasis added.) While the Examiner acknowledges impacts to the natural environment, he includes no discussion of why these impacts are not “substantial” or “undue” as required by TCC 20.54.040.

¹⁸ See AR 359 (Examiner’s First Decision). In his second decision, the Examiner adopted all of his original conclusions of law. AR 53.

Furthermore, the Examiner glosses over the “character” issue. He ignores the true scope and impact of the project by concluding simply that mining already exists in the area. A national wildlife refuge also exists in the area. A six-fold increase in mining operations on land adjacent to fragile and valuable national wildlife refuge is patently inconsistent with the character of the area. This is further bolstered by the ongoing involvement of the community, county, and various state and federal agencies in opposing the QRP proposal.

This omission of a discussion of impacts to the “natural environment,” coupled with the Examiner’s acknowledgment that environmental impacts would result and the lack of factual evidence supporting the Examiner’s second decision render the Examiner’s decision a clearly erroneous application of the law to the facts.

2. The SUP does not comport with the County Comprehensive Plan as required by TCC 20.54.040

Under TCC 20.54.040, an SUP must comply with the County Comprehensive Plan. The QRP proposal does not comply with numerous portions of the Comprehensive Plan.

In his first decision, the Hearing Examiner concluded that the project will comply with the Natural Resource Lands (Chapter 3) and Natural

Environment (Chapter 9) chapters in the Comprehensive Plan. See attached App. D. These Conclusions of Law were then adopted and relied on by the Examiner in reaching his second decision.¹⁹

The Natural Resource Lands chapter requires a project to ensure “that extraction industries do not adversely impact adjacent or nearby land uses” (policies 7 & 8) and “that extraction activities do not negatively affect or endanger surface and ground water flows and quality” (policy 10).

The Examiner concluded that the project is consistent with these policies despite the lack of evidence regarding impacts to the water quality and quantity in the Black River and associated habitat impacts to the Black River National Wildlife Refuge. The Examiner’s conclusion is based on the limited evidence regarding impacts to Ashley Creek and tentative storm

¹⁹ The Board reversed the Examiner, concluding that the Examiner’s findings and lack of findings rendered the project inconsistent with the following goals and policies:

Protecting wildlife habitat for important species and protecting unique and rare habitats (Goal 1, Objective B, Policy 4); recognizing the hydrologic continuity between ground and surface water (Goal 2, Objective A, Policy 3); protecting groundwater aquifers, fish and wildlife habitat, and recreational functions of streams (Goal 2 Objective B, Policy 1); protecting streams from adverse impacts of activities occurring adjacent to their waters or within their watersheds by avoiding degradation of water quality (Goal 2, Objective C, Policy 1).

drainage improvements. Neither one of these address avoidance of adverse impact on the adjacent Black River National Wildlife Refuge.

The Natural Environment Chapter of the County Comprehensive Plan includes several policies that apply to the proposal:

- Protecting wildlife habitat for important species and protecting unique and rare habitats.
- Recognizing hydrologic continuity between ground and surface waters
- Protecting groundwater aquifers, fish and wildlife habitat, and recreational functions of streams
- Protecting streams from adverse impacts of activities occurring adjacent to their waters or within their watersheds by avoiding degradation of water quality
- Maintaining the quality and quantity of runoff entering wetlands and streams, ensuring that stormwater systems are adequately maintained, and preventing on and off-site erosion and sedimentation

The Examiner's conclusion that these policies and goals are met is clearly erroneous. Not only is there no evidence in the record showing that these impacts will be avoided, but the evidence relied on by the Examiner in making a consistency determination is irrelevant.

In reaching his conclusion, the Examiner first relies on the Mineral Resource Lands of Long-Term Commercial Significance designation. AR

355. The Examiner states that “[t]he designation is a determination that gravel mining is an appropriate use for the site, despite the significant environmental amenities contained within the Black River area.” Id. (emphasis added).

Importantly, it was determined during the Examiner’s second hearing, on remand from the Board, that only the currently permitted 26 acres are designated Mineral Resource Lands of Long-Term Commercial Significance (“MRL”). AR 55. Thus, any benefits associated with that designation apply only to current use and do not extend to the current application to expand the operation over 125 adjacent acres that do not enjoy the special MRL designation. Furthermore, even for lands with the MRL designation, compliance with the Comprehensive Plan still is required. The project proposal still must show that it will protect wildlife habitat, and maintain the quality and quantity of water entering adjacent wetlands and streams. See App. D.

Next, the Examiner bases his Comprehensive Plan consistency determination as it relates to groundwater on a series of conclusions which have nothing to do with impacts downgradient of the mine, toward the Black River. AR 355-56. As discussed above, further studies conducted for the

second Examiner hearing did nothing to alleviate this inadequacy. Thus, the Examiner's conclusion that the Comprehensive Plan's policies have been met is erroneous as to assuring protection of groundwater aquifers and associated fish and wildlife habitat.

On the issue of wildlife habitat, the Examiner acknowledged in his Findings of Fact that there was evidence that the Black River corridor contained habitat for the endangered Oregon Spotted Frog, and furthermore that the Black River was essential habitat for cutthroat trout and coho salmon. AR 344-5. In his conclusions, the Examiner only addresses the lack of impact to species habitat in Ashley Creek, not in the Black River National Wildlife Refuge. AR 356.

Finally, the Examiner mentions the ability of the project to maintain water quality in the Black River. He reasons that this is to be accomplished with proposed storm drainage improvements [for which there was doubt as to whether QRP would comply] and regular monitoring. Monitoring is not an adequate assurance of retained water quality. See infra at 46. Monitoring would permit a reduction in water quality before any changes in operation would be required. Polluted groundwater could take years or decades to

remedy once monitoring detected its presence. In this valuable and fragile ecosystem action after the fact may be too little too late.

These omissions are not remedied by the new factual findings and conclusions of law in the Examiner's second decision. The Examiner gives no new consideration to the project's compliance with the Comprehensive Plan policies in his second decision. Furthermore, none of the new evidence submitted addresses adverse impacts on the adjacent Black River National Wildlife Refuge, or more specifically, retention of ground and surface water quality and quantities west of the mine, toward the Black River.

D. The Conditions Implemented by the Examiner do not Remedy the Factual and Legal Inadequacies in the Examiner's Decision

The Hearing Examiner's second decision lists numerous conditions which the Examiner claims would remedy any lingering noncompliance with the County Code requirements. These conditions are inadequate to remedy the factual and legal inadequacies discussed above.

For the most part, the Examiner's conditions rely on monitoring to ensure compliance with relevant code provisions and Comprehensive Plan policies. See AR 57-58 (Conditions H and V). Monitoring the permit every five years is not an effective means of avoiding substantial and undue adverse

impacts to the natural environment. Five years of reduced water quality and quantity could irreparably damage the fragile Black River National Wildlife Refuge.

This “after the fact” and “too little too late” approach will not result in compliance with the Code’s strict requirements that a special use permit be issued only where the applicant can establish that the mine expansion “shall not” result in substantial and adverse effects to the natural environment. TCC 20.54.040(3)(a). This mandate does not leave room for permitting projects where impacts are unknown, in the hopes that monitoring five years later will detect a problem. Too much damage can occur before the problem is detected. And once detected, there is no telling how long -- if ever -- it will take to remedy the problem. This “study-after-the-fact” regime is inconsistent with the burden of proof on the applicant to establish the absence of significant adverse impacts before the project is approved. The County Commissioners rightly determined that a site next to a National Wildlife Refuge and the fragile Black River was about the worst place in the County to utilize this “approve now, study later” approach.

In fact, the Examiner acknowledges that there is remaining and significant uncertainty as to the potential impacts of the proposal to the

groundwater and the Black River. The Examiner requires that “[t]he last three phases of the operation shall be subject to further review including detailed analysis of the impact of the groundwater to the site, the aquifer, and the Black River.” AR 58 (Condition V). This condition virtually mirrors the Examiner’s requirement in his first decision that “the last three phases of the operation shall be subject to further review including detailed analysis of the impact of groundwater to the site, the aquifer and the Black River.” AR 362 (Condition Y). This analysis was the entire purpose of the Board’s remand and the Examiner’s second hearing. But this information is still lacking in the record, and the Examiner still recognizes the need for further analysis.

Condition V goes on to require that QRP “devise water level monitoring parameters that “will validate the predictions of the affects on groundwater.” AR 58. But there have been no predictions on the affects on groundwater to the Black River. There have not even been measurement estimates of the impact of current operations. Condition V effectively enables QRP to devise a monitoring plan that confirms only its predictions of upgradient groundwater impacts (to the east of the site) and continues to ignore likely substantial adverse impacts to the Black River.

The “study later” approach and requirement to monitor only a portion of the potential impacts is wholly inadequate to facilitate compliance with TCC 54.20.040. The Commissioners correctly determined that these conditions do not bring the project into compliance with the Code. They do not substitute for the Code requirement that the applicant prove no substantial impact. They do not remedy the Examiner’s factual omissions and erroneous legal conclusions.

V. CONCLUSION

Although the factual details in this case are copious, the necessary and fundamental facts regarding impacts to the Black River are absent from the record. The Hearing Examiner and Board agreed: the record from the initial hearing did not contain sufficient facts to determine whether substantial or undue adverse impacts to the natural environment would result from QRP’s mine expansion proposal. Thus, the issue was remanded for consideration of water impacts to the Black River and adjacent wetlands.

On remand, the Examiner failed to enter findings pertinent to the critical Black River issues. Nor could he on this record because the new evidence submitted to the Examiner did not address potential adverse impacts to the Black River -- it considered only impacts to Ashley Creek and wells

upgradient of the mining operation. QRP's burden of proof remained unfilled. The substantial evidence on the record which raises red flags as to probable adverse impacts of QRP's proposal and the absence of information dispelling these concerns renders the Examiner's grant of the special use permit premature and unfounded. The decision was not based on sufficient evidence and the Examiner's application of the law to the facts, namely TCC 20.54.040, was clearly erroneous. The facts simply do not establish that substantial and undue adverse impacts to the natural environment will be avoided or sufficiently mitigated.

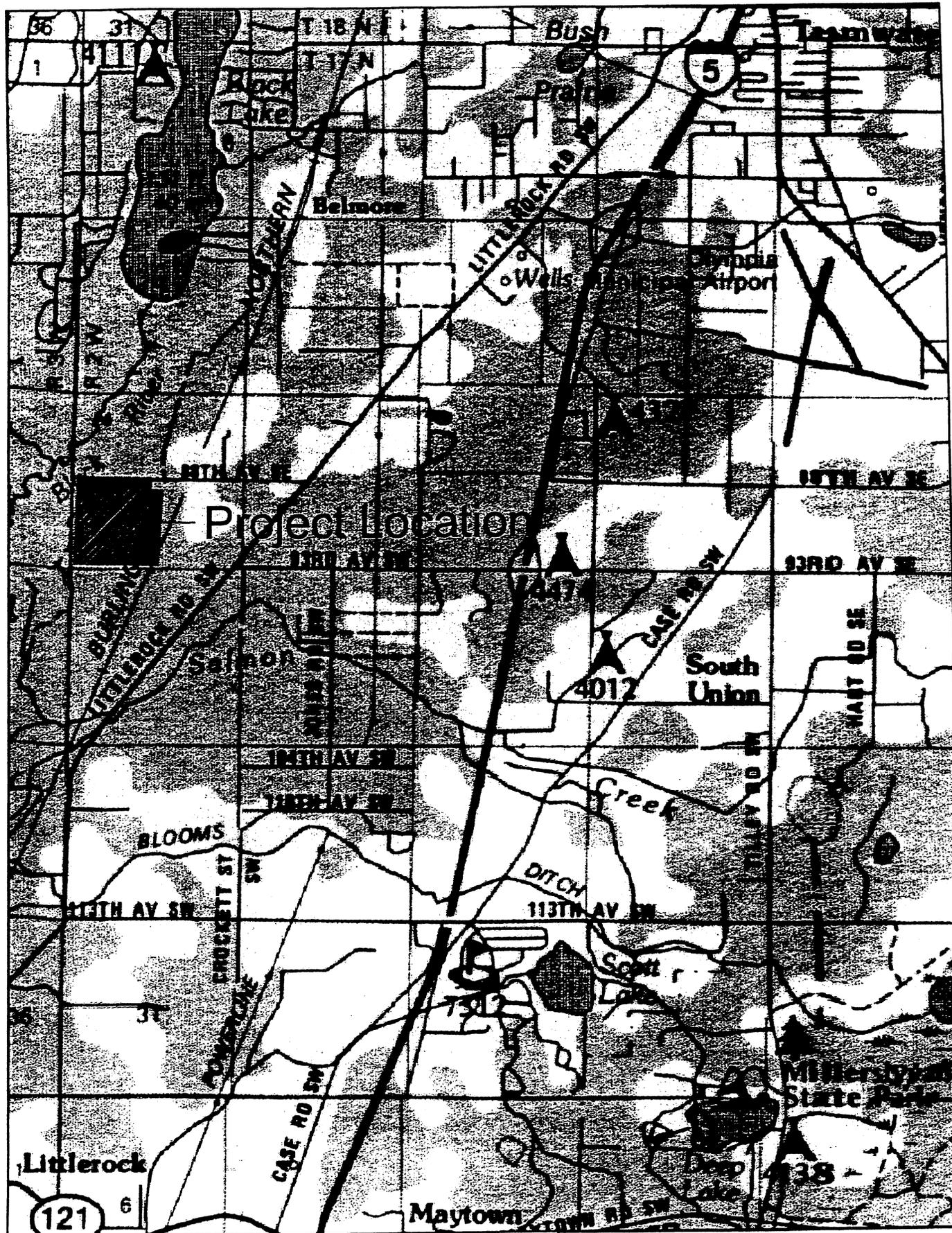
For the foregoing reasons, the Court should vacate the Superior Court decision and reinstate the County Commissioners' decision.

Dated this 22 day of May, 2006.

Respectfully submitted,

BRICKLIN NEWMAN DOLD, LLP

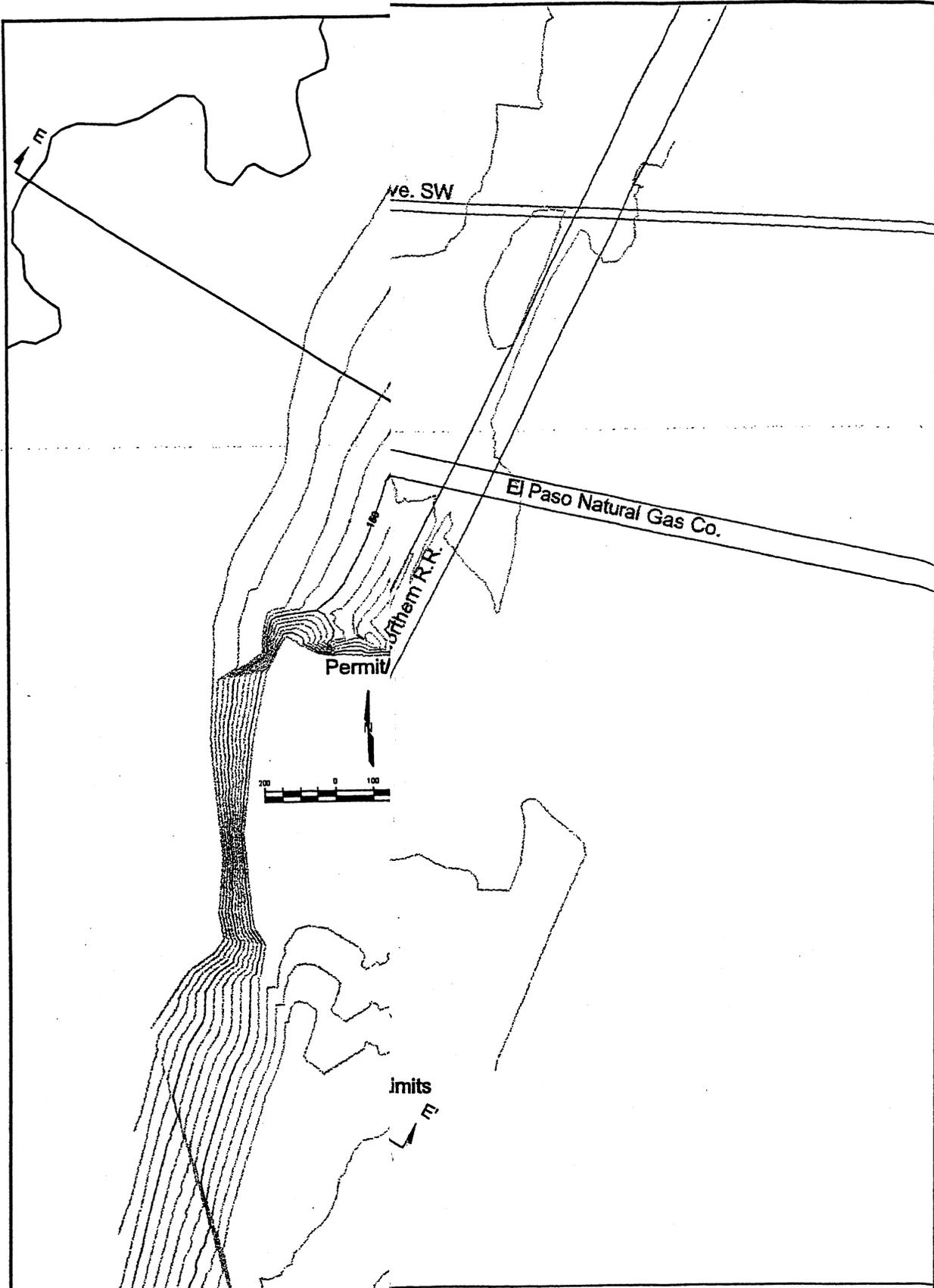
By: 
David A. Bricklin, WSBA No. 7583
Devon N. Shannon, WSBA No. 34534
Attorneys for Black Hills Audubon
Society



DRAWN ON		Quality Rock Products Littlerock "Fairview" Pit Thurston County, WA June 2000	SCALE	 SubTerra, Inc. 218 East North Bend Way, North Bend, WA 98045 Telephone: (425) 888-5425 Fax: (425) 888-2725 E-mail: SubTerra@rwlinc.com
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Appendix A

Figure 1
1692



No.	Date	By	Chk	Appd.	Revisions

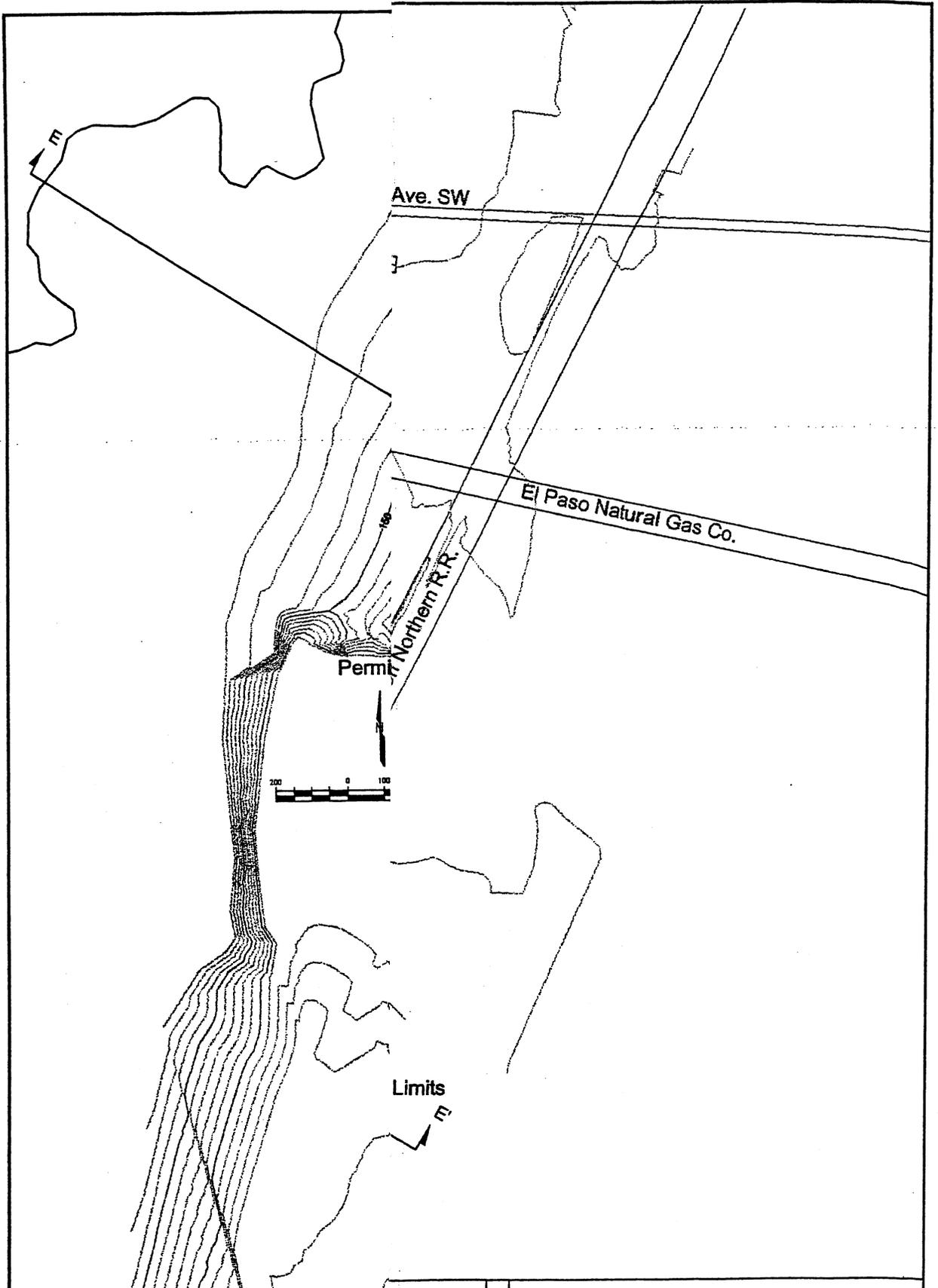
25) 888-2725

Quality Rock Products
 Littlerock "Fairview" Pit
 Thurston County, Washington

1650

Figure 2

SHEET NO.



No.	Date	By	Appd.	Revisions

5) 888-2725

Quality Rock Products
 Littlerock "Fairview" Pit
 Thurston County, Washington
1655

Figure 8

SHEET NO.

Thurston County Code - Title 20 ZONING

Chapter 20.54 SPECIAL USE*

20.54.040 General standards.

In addition to the specific standards set forth hereinafter with regard to particular special uses, all uses authorized as special uses shall meet the following standards:

1. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan and all applicable federal, state, regional, and Thurston County laws or plans.

2. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.

3. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:

a. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though the adverse effects may occur.

...

20.54.070 Use--Specific standards.

The following standards apply to specific special uses and are in addition to those established in other sections of this chapter. The zoning districts in which a special use is authorized are identified in Table 1.

....

21. Mineral Extraction. Mineral extraction (including expansions of existing conforming and legal nonconforming mines) and accessory uses are subject to the following provisions and the provisions of Chapter 17.20 of this code, the Thurston County Mineral Extraction Code:

a. Accessory Uses.

i. The following accessory uses are allowed only when expressly permitted in a special use permit issued by the approval authority: washing, sorting or crushing of rock or gravel, asphalt production (batching or drum mixing), concrete batching, storage or use of fuel, oil or other hazardous materials, and equipment maintenance. Limited manufacturing of concrete products from sand and gravel excavated on-site may be allowed by the department as an accessory use to a permitted concrete batching facility; provided, that retail sales of such products are prohibited. All other accessory uses are allowed only when approved after administrative review by the development services and the roads and transportation services departments.

ii. Accessory units are permitted only in conjunction with an existing mineral extraction operation. Recycling of asphalt or concrete is permitted as an accessory use only in conjunction with a permitted crusher and in accordance with any health department requirements. Temporary asphalt and concrete production may be permitted only to fulfill a contract for one specific public project and for a period not to exceed twelve months or the length of the contract, whichever is shorter. There must be at least twelve months between the end of one temporary use period and the beginning of another on the same site.

Appendix C

CHAPTER THREE -- NATURAL RESOURCE LANDS

I. AGRICULTURE RESOURCES

Community Context: Agriculture in Thurston County has an important and varied role. Although Thurston County is not often noted as a farming county, local agriculture accounts for 16 percent of the County's land use and produces over \$77 million worth of farm products a year. Land conservation and local food production is essential to the long-term sustainability of the community. It preserves nonrenewable resource land, enhances regional self-reliance for food and jobs, maintains diversity of the local economy, reduces dependence on petroleum products, and increases the quality of life. As the county's population continues to grow, the need for conservation measures to protect this resource intensifies because of increased development pressure on farm lands and the greater local demand for agricultural products. This interconnection between urban residents within the county and local farmers points to the need for community-wide awareness, appreciation, and support for farming.

Farming Diversity: Thurston County products range from nursery stock to hay, from strawberries to dairy products, representing the diversity of our local resources. Two major reasons for this diversity are the unique soil and water resources which occur here. For example, the instance of particularly sandy, well-drained soil types in spots throughout the county has given rise to very successful seedling tree enterprises. These soils allow for the planting and harvesting of plants during wet weather, when other soils are impossible to work. This characteristic allows crops to be grown here that are difficult to grow on heavier soils. In addition, pure water from relatively shallow aquifers has provided for the irrigation needs of a variety of different crops.

Thurston County also has a diversity of types of farms. They include larger-scale commercial farms, organic farms, historic family farms, smaller-scale, close-to-market produce farms, orchard farms, and part-time farming operations. Community-Supported Agriculture is a concept that is growing in popularity within the county. And, in recent years fish farming operations have located here, finding substantial quantities of pure water, an important factor in the successful rearing of fish.

uses. Favorable economic conditions include land grade 2 forest soils, which provide (in conjunction with large parcel sizes) the growth potential to manage timber lands for long-term commercial production.

7. History of land development permits issued nearby.

For Thurston County, this means that recent residential development is an indicator of a pattern or direction of growth that may be encroaching on the forest land.

The above criteria were applied throughout unincorporated county areas to designate those forest lands of long-term commercial significance. Those lands that currently meet the criteria are shown on Map M-42.

IV. MINERAL RESOURCES

As a result of major glacial activity in Thurston County's geologic past, major deposits of gravel and sand are located in Thurston County. This geologic heritage provides the raw material for several sand and gravel operations throughout the county. The deposits are perhaps doubly significant considering their proximity to major population areas and construction projects which use sand and gravel.

Another significant mining activity is the Centralia coal mine on the county's southern border with Lewis County. This is an "open pit" mine which supplies the Centralia Steam Plant with coal. Unlike many open pit mines of the past which remain as open scars on the earth, the Centralia mine sets the industry standard for reclamation and minimizing environmental damage. Land that was mined ten years ago now supports a mixed forest of fir and alder, and several wetlands.

Growth Management Act: Section 17 of the 1990 State Growth Management Act states that "...each county...shall designate where appropriate...mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals." The Act defines "minerals" as gravel, sand, and valuable metallic substances. Other minerals may be designated as appropriate. Section 6 of the Act states that "...each county...shall adopt development regulations...to assure the conservation of...mineral resource lands designated under Section 17 of this Act."

Within Thurston County, minerals of potentially long-term commercial significance include sand and gravel deposits, coal deposits (Centralia mine), and rock

resources, such as columnar basalt (shot rock) and sandstone. Basalt "shot rock" is important for highway construction and flood control (rip rap), and the sandstone quarries at Tenino have provided valuable building material for the State Capitol and other structures around the County. There are no known valuable metallic minerals within the County.

To determine the location of mineral resource lands of long-term commercial significance, the County applied the criteria in the Washington State Department of Community, Trade and Economic Development's (DCTED) "Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands, and Critical Areas." The DCTED criteria consider the effects of proximity to population areas and the possibility of more intense uses of the land. They also address the quality, quantity and other physical characteristics of the mineral deposit, and resource availability within the region.

Based on the DCTED Guidelines, the County developed the following criteria to designate mineral resource lands of long-term commercial significance.

1. Mineral Deposits. Existing deposits consist of sand and gravel, coal, basalt, sandstone, or igneous rock, based on U.S. Geological Survey maps or site-specific information prepared by a geologist, or as indicated by State Department of Natural Resources (DNR) mining permit data.
2. Location. Mineral resource lands are located outside public parks and preserves, and at least 1,000 feet from urban growth areas and rural residential areas with existing densities predominantly one dwelling unit per five acres or higher, in order to minimize land use conflicts during the long-term operation of the mine.
3. Minimum Area Width. The minimum area width is 500 feet for sand and gravel, coal, and basalt, which allows for 100-foot setbacks and a 300-foot width for the working site and reclamation.
4. Marketability. Mineral resource lands contain non-strategic minerals which are minable, recoverable and marketable in the present or foreseeable future (50 years).
5. Minimum Value. The resource value over the life of the mine must exceed certain thresholds. The minimum threshold values in 1990 equivalent dollars are as follows:
 - a. Construction materials: \$5,000,000.

- b. Quarried rock: \$1,000,000.
- c. Industrial and chemical mineral materials: \$1,000,000.
- d. Metallic and rare minerals: \$500,000.
- e. Non-fluid mineral fuels: \$1,000,000.

Mining operations meeting the above criteria, and which have all legally required permits at the onset of the extraction operation are designated as long-term commercially significant. In addition, future mining operations which meet the criteria above may apply for designation status concurrently with the application for a Special Use Permit under the Zoning Ordinance. Map M-43 identifies the mining sites currently meeting the designation criteria and is provided for background information only. This map is subject to change based on future approvals for designation by the county's Hearings Examiner. The map will be updated during the next available Comprehensive Plan amendment process following a new designation approval.

Designated mineral resource lands of long-term commercial significance are also shown on the "Official Designated Mineral Resource Lands" map accompanying the official zoning map, in the custody of the Development Services Department. This map shall be immediately updated following approval of a new designated site.

Long-term commercially significant (designated) mineral deposits should be conserved for long-term resource extraction. To this end, the following measures should be implemented:

- Resource use notice to new developments within 300 feet of designated mineral lands, informing prospective property owners of the long-term resource use nearby; and
- Limit private nuisance claims against operators of designated mines when certain conditions are met.

These measures are intended to assure that the use of lands adjacent to designated mineral lands shall not interfere with the continued use, in accordance with best management practices (BMPs), of the designated lands for mineral extraction.

The extraction process does pose potential conflicts with surrounding uses, particularly rural residential uses. While responding to the requirements of the

Growth Management Act, the county also recognizes the needs of existing residents. During the process of designating resource lands of long-term commercial significance, the county considered several concerns related to ground water protection, hazards posed by gravel truck travel, and residential densities surrounding the designated mineral resource lands, among others. The criteria for designation and the conservation measures takes these issues into account. Also in response to the concerns mentioned above, additional requirements for Special Use Permits and BMPs have been adopted by the county. The county intends that these additional standards will ensure that mining operations are in keeping with public health and safety and environmental protection.

Major Mineral Resource Issues: The goals, objectives, and policies of this plan address four major issues involving mineral extraction industries in Thurston County:

- Availability of the resource;
- Restoration of mining sites;
- Minimizing adverse impacts to the environment; and
- Maintaining compatibility between resource use and residential use.

Ensure that Mineral Resource Lands of Long-Term Commercial Significance Can Be Used for Mineral Extractions: Protecting mineral deposits of long-term commercial significance for mining use is an important goal of the policies. The policies lay the basis for allowing mining activities to occur, and prevent residential and other incompatible uses from locating adjacent to these deposits. The county recognizes that a mining operator's hauling distance to the resource user is an important factor to its economic viability. However, the policies also provide that mining activity should not encroach on existing residential uses nor adversely affect the environment. In addition, significant geologic features, should not be used for mining purposes. "Significant geologic features" is left undefined, and it is left for future study to define and identify such features. Prime and unique farmland (as defined by the Soil Conservation Service) should not be used for mining purposes unless they can be restored to their original production capacity as mining occurs.

Restoration of Mining Sites Provided For: The policies specify that mineral extraction sites should be restored as mining occurs. This gives the major direction for the establishment of restoration standards in the action recommendations. Existing, non-operating or abandoned mining sites pose a concern to many county residents because they may leave aquifers vulnerably exposed, and invite illegal waste dumping. The action recommendations also seek to address the problem of these non-operating sites.

Mining Shall not Negatively Affect Water Quality or Quantity: Just as sand and gravel is a natural resource, so too is the ground water the county depends on. The policies provide that generally, mining should minimize adverse impacts on the environment, and specifically, should minimize its effect on surface and ground water.

The Needs of Mining Operators are Balanced with the Needs of Neighboring Residents: The policies recognize the necessity for mineral extraction to be located in rural areas of the county with low population densities or in industrial-zoned areas. The movement of large amounts of mineral resource necessitates good roads capable of handling significant numbers of heavily-loaded trucks. Loaded trucks en route from the extraction site may lose a very small but potentially hazardous portion of their load, and track dirt or mud onto public roadways. Therefore, the policies also respond to the need for better prevention of such mining impacts on county residents.

V. GOALS, OBJECTIVES AND POLICIES

GOAL 1: AGRICULTURE LAND SHOULD BE PRESERVED IN ORDER TO ENSURE AN ADEQUATE LAND BASE FOR LONG-TERM FARM USE. (This applies to all agricultural land)

OBJECTIVE A: Agriculture lands should be conserved and enhanced for long-term farming use.

POLICIES:

1. Residential uses adjacent to farms should be developed in a manner which minimizes potential conflicts and reduces unnecessary conversion of farmland.

ACTION NEED FOR OBJECTIVE A:

Place a notice on any new subdivision or residential building permit located within 300 feet of designated forest land of long-term commercial significance, which states that a variety of forestry activities may occur that may not be compatible with residential development. The notice should also state that a person's right to recover under a nuisance claim against forestry operations may be restricted.

GOAL 6: RURAL FOREST LANDS ENROLLED IN A CURRENT USE TAX ASSESSMENT PROGRAM SHOULD BE PROTECTED FROM PRESSURES TO CONVERT TO OTHER USES.

OBJECTIVE A: Provide measures to protect owners of rural forest lands from development pressures.

POLICIES:

1. Development regulations should accommodate and encourage clustering of residential development on rural lands adjacent to rural forest lands. The open space in clustered development should buffer rural forest land from development.
2. Land use activities adjacent to forest land in rural areas should be sited and designed to minimize conflicts with forest management and other permitted activities on forest land.

ACTION NEEDS FOR OBJECTIVE A: None.

GOAL 7: MINERAL RESOURCE LANDS OF LONG-TERM COMMERCIAL SIGNIFICANCE SHOULD BE ALLOWED TO BE USED BY EXTRACTION INDUSTRIES, WITH MINIMAL HARM TO THE ENVIRONMENT.

OBJECTIVE A: The county should provide regulatory mechanisms that balance and minimize the conflicts between extractive industries, other land uses, and general environmental concerns.

POLICIES:

1. Mineral extraction industries should be allowed to locate where prime natural resource deposits exist.
2. Designated mineral resource lands of long-term commercial significance should be conserved for mineral extraction, and the use of adjacent lands should not interfere with the continued use of the designated mining sites that are being operated in accordance with applicable best management practices and other laws and regulations.
3. Designated mineral resource sites that are being operated in accordance with applicable best management practices and other laws and regulations should be given increased protection from nuisance claims from landowners who have been notified of the presence of the long-term mineral extraction site.
4. Restoration of mineral extraction sites should occur as the site is being mined. The site should be restored for appropriate future use and should blend with the adjacent landscape and contours.
5. Prime and unique farmland (as defined by the SCS) should not be used for mineral or soil mining purposes unless they can be restored to their original production capacity as mining occurs.
6. New residential uses should be discouraged from locating near prime designated mineral deposit sites until mineral extraction is completed unless adequate buffering is provided by the residential developer.
7. Extraction industries should not adversely impact adjacent or nearby land uses, or public health and safety.
8. Proposed mining activities should not alter significant geologic features such as mima mounds.
9. Areas where existing residential uses predominate should be protected against intrusion by mineral extraction operations.
10. Mineral extraction activities should not negatively effect nor endanger surface and ground water flows and quality.

ACTION NEEDS FOR OBJECTIVE A:

1. *Define and identify prime mineral deposits.*
2. *Establish performance standards for mineral extraction and site rehabilitation.*
3. *Define and identify significant geologic features that should not be altered by mining activities.*
4. *Investigate the problems associated with non-operating and non-permitted mining sites and work with the appropriate state agencies to resolve such problems.*
5. *Based on the cumulative effects study on gravel mining, completed by the County Environmental Health Division in 1993, the county shall work with DNR, mineral operators, and interested citizens in the designation and conservation of future mineral resource lands of long-term commercial significance.*
6. *Encourage mineral extraction operators in the county to voluntarily provide a resource use notice to nearby landowners.*
7. *Work with mineral extraction operators in the county to develop a "good neighbor" relationship.*

CHAPTER NINE -- NATURAL ENVIRONMENT

I. ENVIRONMENTAL FEATURES

The Growth Management Act provides for the protection of the environment and the preparation of development regulations to protect critical areas. The Act contains the following Planning Goal 10: "Protect the environment and enhance the state's high quality of life, including air and water quality; and the availability of water." The Act also requires the development of regulations to protect critical areas. Thurston County adopted these regulations in 1993.

The County-Wide Planning Policies also include guidance on the environment. It states that all jurisdictions in the county should recognize our interdependence on natural systems and maintain a balance between human uses and the natural environment, protect ground and surface water from further degradation, protect and enhance air quality, minimize high noise levels, promote awareness of cultural and natural heritage, encourage recycling of materials and products and reduce waste, and plan for growth in a manner that can be sustained without degrading livability and environmental quality.

Thurston County is distinctive for its diverse physical setting. Air quality is generally of high quality due to climate, physiography, and few particulate producing industries. There are over 90 miles of Puget Sound coastline bordering four peninsulas. This shoreline includes rare geologic marine features, high bluffs and a river delta which is the home for over 300 species of wildlife and the Nisqually National Wildlife Refuge. The central area of the county consists mainly of prairies that were cleared long ago. The Black Hills to the west, and the Cascade foothills in the southeast are forested and steep sloped. There are three major river basins and over 100 freshwater lakes and ponds totalling over 6,300 acres. All of these forest, water, and prairie resources are valued aesthetic, recreational, and economic resources.

A variety of natural features are sensitive or pose hazards to development. Wetlands, which are important for local flood control, retention of water quality, and wildlife habitat, cover nearly 10 percent of the county. Another 13 percent of the county has steep slopes or unstable soils which are subject to erosion, slippage, or settling in the event of earthquakes, rain saturation, or improper building practices. Other sensitive areas include floodplains; geologic features such as canyons, waterfalls, and mima mounds; fish and wildlife habitat areas; and rare shoreline features, such as spits, points, and barrier berms.

The policies in this Chapter indicate how the county will protect its natural beauty and quality environment. The policies focus on those features which require special consideration in order to reduce hazards and prevent adverse impacts to the environment as the county grows and as residents undertake their day-to-day activities.

II. WATER RESOURCES

The Growth Management Act requires the jurisdictions planning under the Act to address water resource protection. It requires that the county: "Provide for protection of ground water quality and quantity, and provide guidance for corrective actions to mitigate or cleanse those discharges entering Puget Sound or other waters of the State."

Located at the southern terminus of Puget Sound, Thurston County's diverse water resources range from its beaches to the Bald and Black Hills to the south and west. One of the distinctive water features of Thurston County is the four deep indentations of Puget Sound: Budd, Eld, Henderson and Totten Inlets. The county is separated from Pierce County by the Nisqually River which flows northwesterly from the southeastern corner of Thurston County to the Nisqually Reach on the northern border. Totten Inlet serves as a common water body to both Mason and Thurston Counties.

Thurston County is located within three major drainage basins. The largest is the Chehalis River which, along with the Black and Skookumchuck Rivers, drains the southwest portion of the county. The Deschutes River drains diagonally across the central portion of the county. The Nisqually River drains a narrow area along the eastern boundary of the county. While the Deschutes, Nisqually and small creek drainages flow to Puget Sound, the Chehalis River including the Black and the Skookumchuck Rivers, flows to the Pacific Ocean through Grays Harbor.

A substantial number of lakes abound in Thurston County. Open surface water area accounts for approximately 6,343 acres in 108 lakes. Of these, Alder Lake is the largest at 1,117 acres and is a man-made impoundment of the Nisqually River behind Alder Dam. Black Lake is the largest natural lake at 576 acres which discharges to Percival Creek. Skookumchuck Lake was formed by an impoundment of the Skookumchuck River and contains 550 acres. While the county contains a substantial number of lakes, their distribution is not even throughout the county. Lakes are concentrated in a band across the middle part of the county.

be abandoned in the near future. It identified general protection techniques and outlined the "rails to trails concept". This information became the foundation for the 1992 Railroad Right-of-Way Preservation and Use Strategy for the Thurston Region. The 1992 report included the analysis and recommendations from an intergovernmental committee for each individual rail line. Implementation of action recommendations from this document began in 1993 with the county's acquisition of the Yelm to Tenino corridor and the potential acquisition of the Gate to Belmore corridor by the Port of Olympia.

In 1990, Thurston Regional Planning Council prepared the Olympia, Lacey and Tumwater Urban Trails Plan. This document provided the overall guidance for an interconnected trail and open space system within the urban growth management area of the three cities. It also contains some trails within the rural area, which provide connections to the urban trails and an inventory of existing facilities. It includes guidelines for the blueprint for the future urban trail system.

The Important Greenspaces Map M-31 provides an inventory of the existing recreation, important habitat, preservation, water protection, wetland and trail resources within and adjacent to the county. This map should be updated on a regular basis to reflect existing conditions.

IV. GOALS, OBJECTIVES AND POLICIES

GOAL 1: ENVIRONMENTAL QUALITY SHOULD BE PROTECTED AND IMPROVED, AND THE CAPABILITY OF THE AIR, LAND, WATER, AND FISH AND WILDLIFE RESOURCES TO SUSTAIN VARYING INTENSITIES OF HUMAN ACTIVITIES WITHOUT DEGRADING LIVABILITY AND ENVIRONMENTAL QUALITY SHOULD BE A DETERMINING FACTOR IN MAKING LAND USE DECISIONS.

OBJECTIVE A: *Management Approaches* - A wide range of management approaches should be used to protect the quality of air, land, water and wildlife resources.

POLICIES:

1. Management approaches should recognize our interdependence on natural systems and maintain a balance between human uses and the natural environment by:
 - a. Establishing a pattern and intensity of land and resource use in concert with the ability of land and resources to sustain such use; and

- b. Concentrating development in urban growth areas in order to conserve natural resources and enable continued resource use.
2. Management approaches should include but not be limited to: education, the use of incentives, regulation, construction, maintenance, and public acquisition.
3. The selection of approaches to managing an environmental resource should vary depending upon the degree of risks or hazards to the public, the uniqueness and sensitivity of the resource, and the long-term public benefit and the cost and financing feasibility of the various approaches.
4. Special incentives beyond regulation should be used to encourage preservation of high quality examples of the natural environment. The means to be used (in order of priority) include: open space taxation, the assistance of federal or state resource agencies, the initiatives of private conservation organizations and local land trusts, or public acquisition.

ACTION NEED FOR OBJECTIVE A:

Education programs for all environmental resources (air, land, water, and wildlife) should be developed and implemented. Existing education programs that meet environmental quality objectives should be continued.

OBJECTIVE B: Critical Areas - The county should guide development away from critical areas; uses and activities which may occur within or adjacent to these critical areas should be regulated.

POLICIES:

1. The county should designate Critical Areas which include but are not limited to: Aquifer Recharge Areas, Geologic Hazard Areas, Important Habitats and Species, Special Management Areas, Floodplains, Streams, and Wetlands.
2. The county should continue to limit development within or adjacent to areas which are susceptible to erosion, sliding, earthquakes or other geologic events, as provided in the Critical Areas Ordinance. Such areas should be referred to as "Geologic Hazard Areas."
3. The county should locate and designate geographic areas which contain a unique combination of physical features and require a special set of management techniques specially designed for that area, or where the uniqueness of the area demands and even greater degree of environmental

NATURAL ENVIRONMENT

4. *Continue to seek opportunities for better disposal or recycling of tires and better enforcement of illegal disposal of tires.*
5. *The county should act as the coordinating entity in the upland disposal of clean and contaminated dredge sediments, under the authority of Article 5 of the Sanitary Code.*
6. *The Zoning Ordinance should be reviewed and evaluated for hazardous materials provisions according to the adopted Moderate Risk Waste Plan, the Northern Thurston County Ground Water Management Plan, the Critical Areas Ordinance and the Comprehensive Plan's policies for businesses that handle hazardous materials.*

GOAL 2: THURSTON COUNTY IS COMMITTED TO PROTECTING ITS WATER RESOURCES BY INSURING THAT GROUND WATER IS DRINKABLE; THAT STREAMS, LAKES AND RIVERS ARE FISHABLE; AND THAT SHELLFISH CAN BE HARVESTED IN ITS MARINE WATERS.

OBJECTIVE A: *Management Approaches* - Coordinate water resources planning, funding and implementation within Thurston County to maximize the protection of the resource and minimize the costs of parallel programs and staffs.

POLICIES:

1. The county should manage county-wide water resources through a coordinated water resources program.
2. The county should implement its water resources program through the integration of county ground water supply, surface water, stormwater, lakes, stream and wetland programs.
3. The county should manage water resources by recognizing the hydrologic continuity between ground and surface water.
4. The county should address water resource concerns by relevant geographic area such as a watershed or sub-basin for surface waters and by aquifers for ground waters.
5. The county should use the "watershed approach" when addressing water resources concerns, which include but are not limited to the following: poor agricultural management practices, failing septic systems, untreated

stormwater, stormwater peak flows and volumes, poor forestry management practices, sewage treatment plant effluent, and marine waste disposal.

6. The county should continue to support grass root solutions to local problems by undertaking a ground water, watershed or stormwater basin plans which includes affected stakeholders.
7. The county should support and strive to implement the county-adopted water resource plans addressing watersheds, stormwater, sewerage, ground water, water supply and solid waste including the Northern Thurston County Ground Water Management Plan and the South Thurston County Aquifer Protection Strategy.
8. The county should include common elements which can reduce the duplication of efforts in new watershed, ground water or stormwater basin plans. These plans should address specific state requirements, but generally include the following sections: the identification of the problems, an assessment of the effectiveness of existing management approaches, an analysis of possible solutions, a preliminary cost assessment of those solutions, and a summary of those costs. Costs associated with capital facilities should be included within the Capital Facilities Plan.
9. The county should manage its coordinated water resources by means of prevention as the least costly approach for all residents.
10. The county and the Washington Department of Natural Resources (WDNR) should jointly develop a Memorandum of Agreement (MOA) and a county ordinance regulating forest practices for lands which are likely to convert.
11. The county should monitor both surface and ground water to evaluate program effectiveness, establish trends for both water quality and water quantity and provide for the early detection of pollution which will minimize the damage and the cost of resource restoration.
12. The state, county and LOTT should merge their water quality monitoring data into a common Geographic Information System (GIS) thereby making this information more accessible to the public.
13. The county should distribute a report card on county-wide water quality on an annual basis which includes an evaluation of the data by watershed and the type of water resource.
14. The county should utilize a unified source of funding for water resource protection efforts, to reduce multiple and piecemeal fees and charges for water protection efforts.

ACTION NEEDS FOR OBJECTIVE A:

1. *The polices and action recommendations contained within county adopted water resource plans should be implemented.*
2. *The county and WDNR will need to work on the MOA and the local ordinance for lands likely to convert.*
3. *The county needs to identify and implement a long term funding source to provide for water resource protection services including investigation and enforcement.*
4. *Participate in the intergovernmental regional ground water program. (Resolution 11589, 12/15/97)*

OBJECTIVE B: *Coordinated Protection Options* - Mechanisms to manage water resources should be provided in a regional, comprehensive manner which ensures high quality surface and ground water, preservation of the functions of water resources and compatibility between land and water uses.

POLICIES:

1. The county should protect ground water aquifers, natural drainage, fish and wildlife habitat, public health and recreational functions of rivers, streams, lakes, wetlands, Puget Sound and their shorelines.
2. The county should manage water resources for multiple beneficial uses. Use for one purpose should preserve opportunities for other uses, while maintaining overall water quality. When conflicts arise, the natural system should be given priority.
3. The county should retain substantially in their natural condition: ponds, wetlands, rivers, lakes and streams, and their corridors.
4. The county should not allow uses and activities to degrade lakes, streams and commercial shellfish areas, recreational shellfish harvesting on public lands, or result in the loss of the natural functions of waterbodies, wetlands, and ground water aquifers.
5. The county should require that sewage treatment plant owners have explored opportunities for the beneficial use of treated waste water before any new point discharges are authorized.

ACTION NEEDS FOR OBJECTIVE B: *None.*

OBJECTIVE C: *Surface Water Management* - Protect surface waters and Puget Sound from further degradation.

POLICIES:

1. The county should protect streams from adverse impacts of activities occurring adjacent to their waters or within their watersheds. This protection should be achieved by avoiding stream channel damage from excessive flows, by protecting riparian vegetation and streambank integrity, and by avoiding degradation of water quality.
2. The county should continue to protect and maintain the valuable natural functions of wetlands and stream corridors as provided in the Critical Areas Ordinance, by maintaining an undisturbed or restored native vegetation buffer and by prohibiting filling, draining, and clearing within wetlands and adjacent to streams. Physical alterations should be minimized except where restoring the natural functions.
3. The county should encourage that buffers and wetlands of lakes, streams, rivers, and Puget Sound be restored as a part of new land uses or development activity.
4. The county should encourage stream and wetland restoration activities through partnerships between the county, Conservation District, other agencies and land owners.
5. The county should develop stream and wetland restoration guidelines in cooperation with the Conservation District and other State or Federal resource agencies which improve water quality and habitat values, while still providing for some economic use of the land. When developed, these guidelines should be adopted as part of the Thurston County Critical Areas Ordinance Chapter 17.15.
6. The county should maintain or restore surface waters within the drainage basins of, Geological Sensitive Areas, or areas of significant recreational, commercial shellfish harvesting, and recreational shellfish harvesting on public lands to the highest water quality possible.
7. The county should prohibit waste water discharges, including those from sewage treatment plants, into waters where shellfish are commercially harvested or where there is recreational shellfish harvesting on public lands. Burfoot County Park, Frye Cove County Park, and Tolmie State Park are examples of publicly owned tidelands which are currently open for shellfish harvesting.

ACTION NEEDS FOR OBJECTIVE C:

OBJECTIVE E: *Floodplain Management* - Life and property should be protected from flood hazards and the flood storage and transmission capacity of rivers and streams should be retained.

POLICIES:

1. The county should give priority to such land uses as forestry, agriculture, public recreation, or water-dependent uses in areas subject to flooding to minimize the hazards to life and property. Other development in the flood plain should be of low priority and constructed to avoid damage from floods, including compensating design features.
2. The county should maintain storage and transmission capacity of floodplains by prohibiting filling of wetlands and discouraging filling elsewhere in the floodplain.
3. The county should prohibit encroachment in floodways except for the purpose of stabilizing channels against erosion in order to protect agricultural lands, public roads and bridges, existing public or private structures and to achieve habitat enhancement.

ACTION NEED FOR OBJECTIVE E:

The Flood Management Ordinance needs to be updated to reflect recent changes in the Critical Areas Ordinance and the county's Stormwater Management Program.

OBJECTIVE F: *Stormwater Management* - Stormwater management should be maintained as a major long-term utility service responsibility of local government.

POLICIES:

1. Land use activities and septic tank effluent should not result in polluted stormwater runoff that results in degraded surface or ground water.
2. Existing and new development should minimize increases in total runoff quantity, maximizes on-site infiltration, should not increase peak stormwater runoff, and should avoid altering natural drainage systems to prevent flooding and water quality degradation.

3. Site plans and construction practices should be designed to prevent on- and off-site erosion and sedimentation during and after construction. Runoff also should be routed and sufficiently diffused or controlled so that the flows do not create erosion.
4. The quantity and quality of water entering wetlands, streams and ponds should be maintained.
5. To reduce runoff at commercial and industrial sites, off-street parking and pavement in lightly used areas should use pervious paving devices (such as lattice block pavers or other alternatives) to the maximum extent possible.
6. The county should take steps to ensure that stormwater systems are adequately maintained in order to ensure high quality surface and ground water.
7. Education and technical assistance should be provided in a comprehensive, regional manner to promote understanding the connections between ground and surface waters, and the watershed boundary transcendence over jurisdictional boundaries.

ACTION NEEDS FOR OBJECTIVE F:

1. *The county needs to provide support for implementing the stormwater management program and consider the expansion of similar program efforts in the southern portion of the county.*
2. *The county will need to review and update ongoing water resource plans on a regular basis.*
3. *Desired level of stormwater management activity identified, as well as alternative permanent funding sources for planning, public information and education, monitoring, maintenance, capital improvements, reserves and regulation. As a priority, primary sources of stormwater pollution should be identified and funds provided for an ongoing function within county government to correct polluted runoff problems as they are identified.*

OBJECTIVE G: *Ground Water Management* - Seek to protect the quality and to manage the quantity of ground water for all uses in the present and in the future.

POLICIES:

1. The county should protect water quality and prevent aquifer contamination or degradation through the comprehensive management of the ground water resource in conformance with the principals contained in the Northern Thurston County Ground Water Management Plan and the South Thurston County Aquifer Protection Strategy.
2. The county should restrict land use densities in areas where the supply of ground water is limited unless alternative domestic water supplies are available from other sources.
3. The county should regulate land uses within wellhead protection areas to ensure that negative land use effects on ground water quality are avoided or mitigated.
4. The county should strive to develop and fully implement regional wellhead protection policies and locally developed wellhead plans.
5. The urban growth areas should be serviced by coordinated, reliable water systems. Compatible, coordinated water system design standards should be developed by adjacent jurisdictions within growth areas.
6. Construction and use of individual private wells should be discouraged in urban growth areas where other water is reasonably and economically available.
7. Community water systems should be provided in unsewered areas where residential density is in excess of one unit per acre. Community water systems should also be provided in residential developments with densities in excess of one unit per two acres and with areas of excessive soil permeability. In the urban growth area water pressure and quantity should be sufficient for fire-fighting.
8. Community water supplies must meet State and local standards.
9. The county should require that community water systems are being managed to meet State and local health standards.

10. Water quality of all watersheds feeding into water bodies used for drinking water should be regularly monitored and protected. Polluted watersheds should be identified and programs initiated to improve their water quality.
11. The safe recycling and reuse of water and treated waste water should be encouraged, in order to reduce contamination of receiving waters.
12. The use of no-and low-water use appliances and fixtures should be encouraged, in order to reduce contamination of ground water. The county should make available to residents literature comparing efficiency of low-water use fixtures.
13. Surface water standards should be revised to allow for the injection or infiltration of treated waste water to recharge our ground water aquifers and thereby maintaining more of a balance between recharge and withdrawals.

ACTION NEEDS FOR OBJECTIVE G:

1. *The county and the municipal water purveyors need to implement a long-term funding source to provide water resource protection services for the entire county.*
2. *The county and the municipal water purveyors need to establish and maintain regular programs to monitor water quality in aquifers in order to assess long term trends, levels of contamination, etc.*
3. *The county should review the extent and nature of well siting problems and propose solutions.*
4. *The county should obtain review authority for water systems of up to 14 service connections (Group B systems) and consider expanding the review authority to medium Group A size systems to provide coordinated local oversight of water systems within the county.*
5. *The urban water supply service area plan should be reviewed and strong consideration given to the development of a regional water source and distribution system. The plan should examine 50+ years supply issues and be funded through inter-jurisdictional agreements.*
6. *Identify the extent of areas critical to the protection of drinking water supplies and measures needed to assure their protection.*

7. *The building code should be examined for standards for low-water use fixtures. The county should make available to residents literature comparing efficiency of low-water use fixtures.*
8. *The county should require that community water systems comply with the standards of the state and county Boards of Health.*
9. *The county needs to sustain the awareness of public and private water purveyors regarding the "North Thurston County Coordinated Water System Plan - Area-Wide Supplement" which is being updated.*
10. *Encourage and allow reuse techniques and reclamation of waste water where water quality can be protected.*
11. *Work with other jurisdictions to maintain and support financially, as resources allow, a coordinated water quality and water quantity monitoring program through the Thurston County Regional Ground Water Program.*
12. *Participate in regional collection and management of data through the Thurston County Regional Ground Water Program.*
13. *Provide technical assistance and education, to the extent resources allow, in designated wellhead protection areas to small businesses, industries, and residents regarding proper storage, handling and disposal of hazardous materials.*
14. *Encourage through education and technical assistance the use of safer, less hazardous products and the reduction of hazardous materials.*
15. *Participate, as resources allow, in planning and collaborative training and the implementation of regional spill response in designated wellhead protection areas.*
16. *Consider methods to mitigate the risk from commercial hazardous materials transportation through designated wellhead protection areas when doing transportation planning for new transportation corridors.*
17. *Consult with the appropriate regional transportation planning agencies and neighboring jurisdictions prior to establishing prohibitions of transportation corridors for commercial hazardous materials transport.*
18. *Provide, as resources allow, local information to the existing data management program within the Department of Ecology to develop and maintain an underground storage tank data base for commercial underground storage tanks.*

19. *Coordinate the environmental review with other jurisdictions when a development proposal is within a designated wellhead protection area.*
20. *Participate in regional planning to address loss of domestic drinking water supply.*
21. *Incorporate requirements for enhanced protection of wellhead areas when stormwater drainage manuals and ordinances are revised.*
22. *Work together with other jurisdictions to coordinate educational programs to provide a basic wellhead protection message and work with community groups and private parties to incorporate this message whenever possible.*
23. *Encourage the Thurston Conservation District Board and others to continue their voluntary efforts on education, conservation planning, and installation of best management practices on existing farms, golf courses, parks, schools and other facilities which use pesticides and fertilizers in designated wellhead protection areas.*
24. *Promote the use of integrated pest management, reduction of pesticide use, and reduction of fertilizer use by residents, businesses, and other governmental agencies in designated wellhead protection areas.*
25. *Encourage interjurisdictional water resource management committees to consider wellhead protection during the development of their annual work programs.*
26. *Encourage the Ground Water Policy Advisory Committee and the Solid Waste Advisory Committee to discuss and coordinate activities and programs related to ground water protection and local hazardous waste management.*
(Resolution 11589, 12/15/97)

GOAL 3: IMPORTANT GREENSPACES USEFUL FOR RECREATION, TRAILS, WATER RESOURCE PROTECTION OR WHICH CONTAIN CRITICAL AREAS FOR IMPORTANT HABITATS AND SPECIES SHOULD BE PROTECTED.

OBJECTIVE A: *Important Greenspaces Designation* - Inventory important greenspaces within and adjacent to Thurston County.

POLICIES:

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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

THURSTON COUNTY,
WASHINGTON and BLACK
HILLS AUDUBON SOCIETY,

Appellants/Cross-Respondents,

v.

QUALITY ROCK PRODUCTS,
INC., and EUCON
CORPORATION,

Respondents/Cross-Appellants.

NO. 34128-0-II

DECLARATION OF
SERVICE

STATE OF WASHINGTON)

)

ss.

COUNTY OF KING)

I, DANIEL P. DRAHEIM, under penalty of perjury under the laws of
the State of Washington, declare as follows:

ORIGINAL

I am the legal assistant for Bricklin Newman Dold, LLP, attorneys for
Black Hills Audubon Society herein. On the date and in the manner indicated
below, I caused the Brief of Black Hills Audubon Society to be served on:

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Seattle, Washington.


DANIEL P. DRAHEIM

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