Pursuant to the Port of Tacoma’s January 4, 2010 request for authorization to commence mining activities, the following is an assessment of the level of compliance with the conditions of approval issued through SEPA 02-0612, dated October 24, 2005, and the Hearing Examiner Decision on SUP 02-0612, dated December 16, 2005. Thurston County Code 17.20.160(A) requires that the Resource Stewardship Department make a determination of compliance with conditions prior to allowing the mineral extraction operation to commence.

Each condition of the SUP and SEPA is stated in *italics* and numbered as in the original document. Department findings and analysis follow each condition. Any conflict between or within any of the conditions shall be resolved in favor of the more stringent or more inclusive language.

An appeal of any of the following findings or analysis within this document of February 16, 2010, must be done in writing on the enclosed administrative appeal form, accompanied by a nonrefundable fee of $1,710. Any appeal must be received in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse Complex no later than 4 p.m. on March 2, 2010. Postmarks are not acceptable. If your fee and completed appeal form are not filed by this time, you will be unable to appeal this determination.

**SEPA Conditions**

**Traffic**

1. *The applicant shall provide illumination at the site driveway.*

   Finding: Item must be completed prior to commencement of mining.
   Analysis: No compliance issue with this condition at this time.

2. *The applicant shall prepare and implement a plan that will be used to keep quarry materials out of the County right-of-way.*

   Finding: Not completed. A preliminary plan has been submitted. The final plan must be submitted and approved by the County, and any physical improvements to implement the plan must be completed prior to commencement of mining.
   Analysis: No compliance issue with this condition at this time.

3. *The applicant shall design and construct roadway widening to accommodate truck paths at the site access driveway/Tilley Road intersection.*

   Finding: Initiated but not completed. Road design is underway. Final design must be submitted and approved by the County. Physical improvements are required prior to commencement of mining.
   Analysis: No compliance issue with this condition at this time.
4. The applicant shall design and construct roadway widening to accommodate truck paths at the Maytown Road/Tilley Road intersection.

Finding: Initiated but not completed. Road design is underway. Final design must be submitted and approved by the County. Physical improvements must be completed prior to commencement of mining.
Analysis: No compliance issue with this condition at this time.

Note: For items three and four above, it is the understanding of the County that the Port may seek purchase of property at the Tilley Road/Maytown Road intersection to accommodate movement of the mine entrance approximately 670 feet north to a position directly in line with Maytown Road. The County Public Works Department believes this would be a safer alignment. Such change in the entrance design would require amendment of the SUP. Staff would be the approval authority if this change is determined to be minor. If major, the Hearing Examiner would be the approval authority. Any appeals would be limited to the proposed amendment only.

5. The applicant shall design and construct a northbound right-turn pocket at the I-5 southbound ramps/Maytown Road intersection to WSDOT standards.

Finding: Initiated but not completed. WSDOT is in the process of redesigning and rebuilding this interchange as a part of the on-going widening of I-5 in this corridor. WSDOT has requested that the Port incorporate their design needs into the DOT project and construct the new interchange as a single project. Therefore, the Port must either have the timing of this condition amended or refrain from using I-5 northbound to haul gravel until the rebuild is completed. The business plan for the mine shows that 50% of the gravel will be exported by rail and another 10% will travel south on either Tilley Road or I-5.
Analysis: No compliance issue with this condition at this time.

Aquifer (Although based on the above mentioned reports [several hydrogeologic reports and analyses] stating that no impairment to the groundwater is predicted, the following conditions will apply):
6. The applicant shall adopt the Maytown Aggregates Groundwater Monitoring Plan, (Appendix B and Revision 2 of the Groundwater Monitoring Plan, dated September 26, 2005) with the following provisions:

A. Prior to any mining activity and within one-year of final issuance of the Special Use Permit (as used in this MDNS “final issuance” means the issuance of the permit and the resolution of any appeals) the operator will field verify off-site supply wells in the following areas:

1. West half of Section 6, T16NRIW R2W
2. Northwest quarter of Section 7, T16N 5. South one-half of Section 11, T16N RIW R2W
3. Southwest quarter of Section 2, T16N 6. South one-half of Section 12, T16N R2W R2W
4. Northeast quarter of Section 10, Ti 6N
Finding: The requirement for information relating to this condition has been met. However, the time deadline set out in the condition was not met. This information was required to be submitted by December 2006, but was not submitted until December 2009. Therefore, this condition will remain technically out of compliance.

Analysis: After reviewing this condition, staff assessment is that the time deadline presumed that mining activities were imminent, thus there was some urgency in meeting the condition. As no earth disturbing or mining activity has taken place, although the deadline was not met, at this time, staff do not consider this a significant issue. Such minor timeline change may be approved by staff upon submittal of an application for amendment. This decision would be appealable to the Hearing Examiner.

B. The operator shall collect the following information from the above-mentioned wells to which owners grant access and which require no modifications to the owner’s well and shall provide the County with a report documenting the following well inventory:

1. Owner 11. Typical water use and well problems
2. Location 12. Water treatment facilities
3. Contact Information 13. Specific conductance
4. Well log 14. pH
5. Diameter 15. Turbidity
7. Depth of openings 17. iron-related bacteria activity
8. Pump set depth measurement
9. Depth to static water level 18. Appearance of well house, well and
10. Pumping rate 19. Photo of well house and well head

The mine operator shall update the inventory every five years as long as the mining operation is active and provide the report to the Thurston County Development Services Department.

Finding: The requirement for information relating to this condition has been met. Because no timeline was specified in the condition, staff determined that this condition must be satisfied prior to any substantial land disturbing activity on-site. Based on a January 14, 2010 site visit, it was confirmed by staff that no substantial land disturbing activity had yet occurred.

Analysis: This condition is satisfied

C. Pursuant to the Groundwater Monitoring Plan, to avoid repeated access to the private wells identified in the proceeding conditions, seventeen (17) monitoring wells shall be established within and surrounding the mine. The wells shall monitor water levels, temperature, and water quality, including measurement of background conditions, and by documenting the construction and performance of off-site water supply wells prior to mining. Four well stations are specific to NPDES monitoring of the process water. The other 13 stations serve the purposes of monitoring for protection of off-site wells and wetlands. The operator shall survey these monitoring wells: (a) six times yearly; or (b) four times yearly if data loggers are installed in the monitoring wells. The surveys shall begin within 60 days of the final issuance by the County of the Special Use Permit. The monitoring data shall be submitted to Thurston County Development Services
Finding: This condition has been partially satisfied. However, the specified time deadlines were not met. The reports were required to begin in March 2006. They actually began in January 2008. Pursuant to the condition, 17 sites are to be monitored. The reports show only 14 sites. A 15\textsuperscript{th} monitoring well has now been drilled and wells 16 and 17 are awaiting clearance from the State Department of Ecology. These two wells are to be located in the potential contamination plume from the previous use of the site as a dynamite factory. Cleanup of this area is on-going.

Additionally, the condition specifies four parameters to be monitored. The Groundwater Monitoring Plan, which is referenced in the condition and was required to be adopted by the mine operator, specifies only two. The reports submitted to date only monitor the two specified in the plan, water level and temperature. Even so, several of the reports are missing the temperature data. The Port asserts that the problem with temperature gathering has been rectified and temperature will be included in all future reports.

Analysis: It has been the long-standing practice of the Land Use and Environmental Review Division that the more inclusive/protective condition shall apply when conditions conflict. Therefore, the Port’s choice to only comply with the Monitoring Plan does not fully satisfy the condition. Monitoring for water level, temperature, water quality and background conditions must be completed at all monitoring sites.

To provide an effective baseline from which to compare after mining commences, the water quality and background conditions must be monitored a minimum of two times prior to the commencement of mining. One monitoring event must occur during the highest groundwater levels in March and one must occur during the lowest groundwater levels in September. At minimum, the water quality monitoring shall include organic scans, pesticide scans and scans for cations and anions to determine the ionic balance. A more complete description of the required water quality monitoring parameters, as determined by the County Hydrogeologist, is attached to this document.

Again, it is the staff assessment that the deadline attached to this condition presumed that mining activities were imminent, meaning within twelve months. Although the applicant did not meet the deadline, the fact is, no earth disturbing or mining activities have yet taken place. Thus, presuming that the applicant follows through with the plans outlined above, including drilling and monitoring wells 16 and 17, the opportunity to conduct a full monitoring plan as described in the condition, to be used as a baseline for future comparisons, still exists. Because it is still possible to obtain that full baseline data set, at this time, staff does not believe that missing the deadline set out in the original condition is a significant issue. Staff will not authorize any mining activities until the baseline has been established. Such minor timeline change may be approved by staff upon submittal of an application for amendment. The timing for full
establishment of that baseline will be set during review of the amendment. This decision would be appealable to the Hearing Examiner.

D. If a well owner identifies impairment of his/her well that he/she believes is caused by the mining operation, the County and operator shall follow the procedures identified in the Groundwater Monitoring Plan and act immediately to determine whether there is probable cause that the impairment is caused by the mine. If the conclusion is a finding of probable cause, the mine operator shall immediately either repair the identified problem or replace the well with a well that yields a similar amount of water as the original and that has comparable water quality. If impairment is found to be caused by the mining activity the mining operator shall pay all remedy costs.

Finding: Condition satisfied for purposes of commencement of mining. Action not required until a well owner identifies well impairment.
Analysis: No compliance issue with this condition at this time.

E. In the event that monitoring shows significant groundwater contamination, turbidity, or other degradation the mining operator may be required to cease operations until such time as acceptable mitigation has been provided and implemented and further monitoring data demonstrates the issue has been satisfactorily resolved.

Finding: Condition satisfied for purposes of commencement of mining. Action not required unless contamination identified through required monitoring.
Analysis: No compliance issue with this condition at this time.

F. Pursuant to TCC 20.54.070(21)(e) a public hearing must be held every five years after receiving Special Use Permit approval for mineral extraction. Additional to the application material required by TCC 20.54.070(21)(e) to be submitted at the 5-year review period, the applicant shall submit a report prepared by a licensed professional hydrogeologist that analyzes the Groundwater Monitoring Plan and include an assessment of the current condition of the groundwater.

Finding: Condition satisfied for purposes of commencement of mining. Initial Five-Year Review must be completed by December 30, 2010. This review must be initiated by the mine operator. This review could take four to six months from the date of application to complete.
Analysis: No compliance issue with this condition at this time.

**Critical Areas**

7. The final site plan delineating all on-site critical areas, project boundary and mine boundary and all SEPA and Hearing Examiner conditions shall be recorded with the Thurston County Auditor on all parcels.

Finding: The final site plan has been submitted, but not yet approved or recorded. Staff are evaluating the plan and may call for additional elements to be included or clarification of certain elements of the plan. Should a plan be approved by the County, the map and the conditions of
approval must be recorded with the County Auditor by the Port or subsequent owner prior to the commencement of mining.

Analysis: No compliance issue with this condition at this time.


Finding: This condition has been partially satisfied. The previous owner of the site revised the original mining proposal to come into compliance with terms of the Agreement. The revised proposal was approved through the SUP. At the time of the sale of the property to a mine operator, the Agreement also requires the payment of $325,000 to “Conservation Organizations” for the purpose of monitoring, restoration, enhancement and acquisition of habitats on-site or within the Black River watershed. Upon payment, this condition will be satisfied for the purposes of the commencement of mining.

Analysis: No compliance issue with this condition at this time.

9. The total 1,613-acre ownership contains several critical areas and habitats that are regulated by the Thurston County Critical Areas Ordinance (Title 17.15), including wetlands, streams, riparian areas, native out-wash prairie, and oak woodland habitats, as well as a number of species using those habitats. In accordance with the Thurston County Critical Areas Ordinance 17.15.900, in order to define the edge of the critical area buffers and to protect the delineated buffers from encroachment, signs shall be constructed at the edge of all critical area buffers. The buffers shall be accurately identified and marked by a professional wetland biologist and habitat biologist. The signs shall be metal (or alternative permanent and durable material) and mounted on a minimum 4 by 4 inch treated wood post. The template for the sign must be presented to Thurston County Development Services Environmental/Shoreline Section for approval. These signs shall be located at the point where the buffer makes a change of direction, and not less than every 300 feet so that each sign is viewable from another sign in each direction.

Finding: This condition is partially satisfied, but must be completely satisfied prior to any substantial land disturbing activity on-site. Over 220 signs have been posted around some wetland areas and around the two oak areas inside or adjacent to the mine activity area. Prior to any substantial land disturbing activity, the remainder of the signs must be posted. This would include an estimated 30 to 50 signs delineating the prairie habitat buffer along the east edge of the property, and an estimated 75 to 100 signs along the south and west property lines delineating the wetland buffers. The design of the prairie habitat sign was approved by the Land Use and Environmental Review Division on February 1, 2010.

Analysis: No compliance issue with this condition at this time.

Critical Areas-Wetlands

10. The applicant shall be in full compliance with Thurston County’s Critical Areas Ordinance 17.15 for protection of all on-site wetlands. The Wetland Boundary Survey and Rating Report dated August 1, 2002 prepared by Ecological Land Services, Inc. identifies four wetland areas (A, B, C-2002, and D-2002) that lie nearest to the project boundary.
Wetland A — Is rated as a Class I wetland according to TCC 171 5.920 and is located to the south and west of the project site. Two species, the aquatic plant, howellia, a listed federal and state threatened plant, and the Oregon spotted frog, a state listed endangered species, are documented as occurring in Wetland A. A Class I wetland requires a 300-foot wide buffer for High Intensity Land Uses in accordance with Table 10 of Chapter 17.15 TCC, which is the minimum buffer width for Class I wetlands with important wildlife functions as required by the Thurston County Critical Areas Ordinance. The edge of the 300-foot buffer associated with Wetland A shall be accurately identified and marked by a professional wetland biologist and signs shall be erected as stated in condition number nine.

Finding: This wetland has been delineated and the wetland and its buffer have been sold to the Washington State Department of Fish and Wildlife. The buffer edge coincides closely with the property boundary. However, to be fully compliant, wetland buffer signs must be placed along the property line. No signs have been placed to date.
Analysis: No compliance issue with this condition at this time, but as noted, additional signage will be required.

Wetland B — Is rated as a Class II wetland according to TCC 17.15.920 and is located in the western portion of the applicant's overall ownership, just east of Wetland A. A Class II wetland requires a 200-foot wide buffer for High Intensity Land Uses in accordance with Table 10 of Chapter 17.15 TCC, which is the minimum buffer width for Class II wetlands as required by the Thurston County Critical Areas Ordinance. The edge of the 200-foot buffer associated with Wetland B shall be accurately identified and marked by a professional wetland biologist and signs shall be erected as stated in condition number nine.

Finding: This wetland has been delineated and the wetland and its buffer have been sold to the Washington State Department of Fish and Wildlife. The buffer edge coincides closely with the property boundary. However, to be fully compliant, wetland buffer signs must be placed along the property line. No signs have been placed to date.
Analysis: No compliance issue with this condition at this time, but as noted, additional signage will be required.

Wetland C-2002 - Is rated as a Class III wetland according to TCC 17.15.920 and is within an isolated depression in the northwestern corner of the applicant's overall ownership just north of the main paved entrance to the property. A Class III wetland requires a 100-foot wide buffer for High Intensity Land Uses in accordance with Table 10 of Chapter 17.15 TCC, which is the minimum buffer width for Class III wetlands as required by the Thurston County Critical Areas Ordinance. The edge of the 100-foot buffer associated with Wetland C-2002 shall be accurately identified and marked by a professional wetland biologist and signs shall be erected as stated in condition number nine.

Finding: This wetland lies within Port ownership and has been delineated and partially signed. To be compliant, a minimum of three additional wetland buffer signs shall be placed along the west buffer edge prior to any substantial land disturbing activity on-site.
Analysis: No compliance issue with this condition at this time, but as noted, additional signage will be required.

Wetland D-2002 — Is rated as a Class III wetland according to TCC 17.15.920 and is located north of the Tacoma Rail Mountain Division rail line. A Class III wetland requires a 100-foot wide buffer for High Intensity land uses in accordance with Table 10 of Chapter 17.15 TCC, which is the minimum buffer width for Class III wetlands as required by the Thurston County Critical Areas Ordinance. The edge of the 100-foot buffer associated with Wetland D-2002 shall be accurately identified and marked by a professional wetland biologist and signs shall be erected as stated in condition number nine.

Finding: This condition has been satisfied.
Analysis: Compliant.

Critical Areas-Oak Woodlands
11. The Habitat Management Plan dated August 1, 2002, and the Supplement Report dated April 23, 2004 prepared by Ecological Land Services, Inc. identifies four areas of oak trees within the applicant’s overall ownership. All four oak tree areas described in the Supplement Report to the Habitat Management Plan dated April 23, 2004 shall be excluded from the project area as already shown on the site plan.

Finding: This condition has been satisfied.
Analysis: Compliant

Critical Areas-Riparian Areas
12. The Beaver Creek and Allen Creek Wetlands occur in the southern and western portions of the property. Both systems are associated and are within Wetland A, which requires a minimum 300-foot buffer from the wetland edge. The applicant has provided a buffer of at least 300 feet. The Groundwater Monitoring Plan will monitor water levels in Finger 4 of Wetland A (station wetA-1)

The applicant has reached an agreement with Black Hills Audubon Society (BHAS). BHAS sought the input, technical assistance and expertise of Capitol Land Trust and The Nature Conservancy of Washington in evaluating the Maytown Aggregates proposal, as well as the technical assistance and expertise of the Departments of Fish & Wildlife and Natural Resources. The agreement explains that the Conservation Organizations wish to insure that aggregate operations are sited in appropriate locations with adequate provision for conservation of important habitats. After extensive work with the applicant and experts representing BHAS and the applicant to develop a monitoring plan, the Conservation Organizations and agencies concluded that, if they had adequate funds, they could provide for more targeted monitoring of species of concern, provide a better response time and more immediate corrective action if issues were identified, and provide enhancements that help species of concern and maintain a stable habitat regardless of whether or not changed environmental conditions are due to mining. The agreement provides funds to BHAS to carry out these activities in lieu of the applicant conducting hydrologic and biologic monitoring. The agreement provides: The Conservation Fund shall be used for monitoring, enhancement and/or restoration, and acquisition of habitats
on site or habitats within the Black River watershed which will benefit the species of concern. The Conservation Fund may also be used to perform control monitoring of species of concern within the South Puget Sound area. Monitoring shall be performed by WDFW and/or DNR or an independent consultant in consultation with WDFW and/or DNR at multiple intervals on an annual basis. The habitat areas shall be monitored for the duration of the SUP (Special Use Permit)."

Condition 8 requires the applicant to comply with this agreement.

Finding: This condition contains no requirements. It re-states the terms of the Agreement discussed in number 8 above.
Analysis: No compliance issue with this condition at this time.

Critical Areas-Native Outwash Prairie
13. The Habitat Management Plan delineates and describes a Native Outwash Prairie along the eastern most portion of the property. Table 8 of the Thurston County Critical Areas Ordinance lists Native Outwash Prairies as an important habitat within Thurston County. TCC 17.15.720 establishes buffers on a case-by-case basis as described in a required habitat management plan in compliance with TCC 17.15.735. The Supplement Report to the Habitat Management Plan concludes that the Native Outwash Prairie will be avoided, buffered by a minimum of 100 feet, and will not be impacted by the mining activity. The edge of the minimum 100-foot buffer associated with Native Outwash Prairie shall be accurately identified and marked by a professional biologist and signs shall be erected as stated in condition number nine.

Finding: Requirements for this condition are included in number 9 above. This condition is partially completed. The prairie area has been delineated but not yet signed. The condition is discussed in number 9.
Analysis: No compliance issue with this condition at this time, but as noted, additional signage will be required.

Critical Areas-Important Species of Thurston County
14. Table 9 of the Thurston County Critical Areas Ordinance lists important species for Thurston County. TCC 17.15.735 requires a Habitat Management Plan to be prepared by a certified wildlife biologist, habitat management consultant or botanist to identify all important species that could be impacted by the proposed project. The intent of the Habitat Management Plan is to analyze the effect of the proposed development, activity, or land use change upon the wildlife habitat suitable for the important species identified by Thurston County and to avoid and mitigate any adverse impacts to the habitats. The Habitat Management Plans dated August 1, 2002 and April 23, 2004 prepared by Ecological Land Services, Inc identifies all the important habitats within the overall 1,613-acre ownership and all-important and endangered species that could inhabit within those habitats.

The plan reviewed the likelihood that the following species may be present within these habitats: Bald Eagle, Oregon Spotted Frog, Mardon Skipper, Whulge Checkerspot, Bull Trout, Coho Salmon, Coastal Cutthroat Trout, Oregon Branded Skipper, Oregon Silverspot, Puget Blue, Valley Silverspot, Golden Paintbrush, Howellia, White-Top Aster and the Olympic Mudminnow.
It determined that the following species are present or probably present in the site but outside of the Mine and Project Boundaries: Oregon Spotted Frog (a federal candidate species, state endangered species, County important species), Coho Salmon, Howellia (federally and state listed threatened species), and the Olympic Mudminnow (state sensitive species and County important species).

It identified the native outwash prairie as potentially providing suitable habitat for the Mardon Skipper, Whulge Checkerspot, Oregon Branded Skipper, Puget Blue, Valley Silverspot, Golden Paintbrush, and White-Top Aster, although no individuals were observed in the many site visits. Beaver and Allen Creeks provide suitable habitat for Coastal Cutthroat Trout.

The Habitat Management Plans conclude that the required buffers and monitoring of the Important Habitats will adequately protect all probable important and listed species identified on the entire 1,613 acres. As explained in Condition 12, the applicant has reached an agreement with BHAS with technical assistance and expertise from Capitol Land Trust, The Nature Conservancy of Washington and the Departments of Fish & Wildlife and Natural Resources in evaluating the Maytown Aggregates proposal. The agreement provides BHAS funds to be used for targeted monitoring of species of concern, provide a better response time and more immediate corrective action if issues were identified, and provide enhancements that help specifics of concern and maintain a stable habitat regardless of whether or not changed environmental conditions are due to mining. The agreement provides funds to BHAS to carry out these activities in lieu of the applicant conducting hydrologic and biologic monitoring. The agreement provides:

The Conservation Fund shall be used for monitoring, enhancement and/or restoration, and acquisition of habitats on site or habitats within the Black River watershed which will benefit the species of concern. The Conservation Fund may also be used to perform control monitoring of species of concern within the South Puget Sound area. Monitoring shall be performed by WDFW and/or DNR or an independent consultant in consultation with WDFW and/or DNR at multiple intervals on an annual basis. The habitat areas shall be monitored for the duration of the SUP (Special Use Permit).”

Condition 8 requires the applicant to comply with this agreement.

Finding: This condition contains no requirements. It describes the potential species on-site and re-states the terms of the Agreement discussed in number 8 above.
Analysis: No compliance issue with this condition at this time.

Noise
15. Noise levels shall comply with WAC 173-60. The operator shall ensure that noise levels are monitored at least quarterly following the start of mining operations. All monitoring must be done using qualified personnel and equipment as specified in WAC 173-58 or as otherwise approved by the Thurston County Health Department. Monitoring results and data must be submitted to Thurston County Development Services and the Health Department for review. All monitoring must be done during normal operating conditions and hours and must continue on a
quarterly basis until or unless the Health Department determines a lesser or greater frequency is warranted. If the applicants propose a method of noise monitoring for this facility other than specified in WAC 173-60, then a detailed monitoring plan must be prepared and submitted for review and approval prior to the start of mining operations. In the event that monitoring shows noise levels at the property lines exceeding the daytime or nighttime standards in WAC 173-60, the applicants may be required to cease operations until such time as acceptable mitigation has been provided and implemented and further monitoring data demonstrates the noise levels have been reduced to levels meeting WAC 173-60. The use of back-up strobe lights may be required as an alternative to back up beepers if the beepers are found to be a significant noise impact to near-by residences. The applicant shall construct a 15-foot high landscape berm along the entry road and 1,000 feet east of the entry road to mitigate any probable noise impacts. All equipment used on the site shall be equipped with mufflers and be properly maintained to limit noise.

Finding: This condition has not been completed. The 1000-foot long noise berm along the north property line has not been installed. It must be in place prior to the commencement of mining. Noise monitoring reports must begin when mining commences.
Analysis: No compliance issue with this condition at this time.

Environmental Health
16. This project must be phased in such a manner as to comply with the ongoing Remedial Investigation and Feasibility Study being evaluated by the Washington State Department of Ecology (WSDOE). The SEPA determination and conditions must include the proposed permit language and conditions submitted by the WSDOE (please refer to the February 6, 2004 and February 20, 2004 letters from WSDOE). Gravel mining operations may begin in the northeast portion of the property (areas 1 & 2 located north of the railroad tracks). Mining operations may NOT proceed into any areas south of the railroad tracks until formal written approval to do so has been received from the Washington State Department of Ecology. Mining may proceed only into the portions of the property specifically identified by the WSDOE as needing no further action with respect to soil and/or groundwater contamination and clean up activities.

Finding: As of this date, WDOE has cleared six of the eight mine segments. The two offending segments, five and eight, cannot be mined until cleared by WDOE. This condition is completed for the purposes of the commencement of mining. As background, at the time this condition was drafted, only segments one and two were cleared by WDOE. Therefore, they were selected as the first areas to be mined. These are the only two segments located north of the railroad tracks. Now that other areas have been cleared for mining by WDOE, segments one and two need not be the first areas mined.
Analysis: No compliance issue with this condition at this time.

17. All aggregate wash water must be disposed of per the method previously agreed upon between the applicants, the Health Department, and WSDOE. This agreement states that wash water will be directly discharged into excavation pits. In addition, the disposal pond(s) for wash water must be sand lined to mitigate possible turbidity increase in underlying aquifers.

Finding: This is a condition related to mining practice. No additional action is required prior to the commencement of mining.
Analysis: No compliance issue with this condition at this time.

18. **Formal sewage system permit applications and designs must be submitted and receive approval from the Health Department prior to the release of any building permits on this property.**

Finding: Sewage system designs have not been submitted to the County. Even so, one building permit for a 320 square foot scale house was issued. The permit was issued because the structure did not have plumbing and therefore met the intent of the condition. Subsequently, the permit lapsed for lack of progress. The building was never constructed. It is not likely that another building permit will be issued unless it complies with the letter of the condition.
Analysis: No compliance issue with this condition at this time.

19. **Prior to release of any building permits on this site a public water system for this facility must be developed and receive final construction approval from either the Drinking Water Section of this department (Group B systems) or the Washington State Department of Health (Group A systems).**

Finding: A water system design has not been submitted. It must be submitted prior to the issuance of a building permit for any structure.
Analysis: No compliance issue with this condition at this time.

20. **The applicants have submitted an acceptable hazardous materials handling & spill response plan for vehicle and equipment maintenance and fueling activities. Copies of the approved spill plan must be made available to all employees on the site during mining operations.**

Finding: The hazardous materials plan must be available on-site prior to commencement of substantial land disturbing activity.
Analysis: No compliance issue with this condition at this time.

21. **If the total ground water withdrawal on this site will be equal to or greater than 5,000 gallons per day, a water right permit from the Washington State Department of Ecology would be required.**

Finding: The Port has submitted water right certificate numbers to the County. However, the certificates are old and the previous industrial use of the site has been discontinued for several years. The County has not received independent confirmation from the State Department of Ecology that the certificates are still valid. Confirmation in the form of a letter from the Department of Ecology must be provided by the Port or subsequent owner prior to using more than 5,000 gallons of water per day.
Analysis: Without confirmation of the water right validity from the State Department of Ecology, the County will limit mining and associated activities to an amount possible using no more than 5000 gallons of water per day. This includes rock washing, dust control, truck wheel washing and domestic use.

*Lighting*
22. Any lighting on the site must be directed away from adjoining properties and must be shielded to prevent any glare from being directed onto adjoining properties.

Finding: This condition has not been completed. Lighting is only required if after dusk or before dawn activity is planned. Prior to the use of lights for mining activity, the County must conduct a lighting analysis that may include a site visit and review of a spillover metering report by a lighting technician hired by the mine operator. Analysis: No compliance issue with this condition at this time.

**Drainage and Stormwater**

23. The proposed development must comply with all requirements and best management practices for the treatment of stormwater including but not limited to high quality oil/water separators, grass-lined swales, extended detention dry ponds, wet ponds or created wetlands in compliance with the Drainage Design and Erosion Control Manual for the Thurston Region, as implemented by the Thurston County Development Review Division. To avoid critical area buffer impacts resulting from the erosion of stockpiled or permanently-placed soils or from overburden and other materials, erosion control measures outlined in the Surface Water Management Plan dated July 2002 prepared by Sub Terra, Inc. shall be implemented.

Finding: This condition has not been completed. Prior to the commencement of berm-building and again prior to the commencement of mining, the County Public Works Department must certify that appropriate stormwater facilities have been installed. This is an on-going compliance activity that will take place as new mine segments are opened over the life of the mine. Analysis: No compliance issue with this condition at this time.

24. Erosion must be controlled throughout the mining and construction period. Should soil migration occur, approved methods of erosion control must be implemented. These methods may include, but are not limited to, replanting exposed soils, and covering of exposed soils with plastic or two inches of loose straw.

Finding: This condition follows from the previous condition. Before and after the appropriate stormwater facilities are installed, erosion must be controlled throughout the life of the operation. Analysis: No compliance issue with this condition at this time.

25. Storm water runoff from the fill slopes shall be directed toward a perimeter trench that will serve both as an infiltration swale and conveyance ditch. The conveyance ditch shall lead to a series of sedimentation ponds that flow into an infiltration pond. The fill material shall be revegetated as soon as possible after placement.

Finding: Not initiated. Item must be completed prior to commencement of mining. Analysis: No compliance issue with this condition at this time.

**Air quality**

26. Three agencies have air quality jurisdiction in the project area: the United States Environmental Protection Agency (EPA), the Washington State Department of Ecology (DOE)
and the Olympic Air Pollution Control Authority (OAPCA). All operations on site must meet the standards and requirements of each agency.

Finding: This condition must be met at all times during mining and the period of mine site preparation. Prior to the commencement of mining, the operator must receive approval for a construction permit from ORCAA. No other specific actions required prior to the commencement of mining.
Analysis: No compliance issue with this condition at this time.

Utilities
27. All utilities must be extended to the site in accordance with the provisions and requirements of the service providers.

Finding: This condition has been satisfied. Electricity has been extended to the site. No other off-site utilities will be extended.
Analysis: Compliant.

Fire Safety
28. If underground storage tanks (USTs) are used on site for storage of petroleum products or waste oil, the tanks must be registered and licensed with the Washington State Department of Licensing. The operation and maintenance of the USTs must comply with Chapter 9046 RCW and Chapter 173-360 WAC — Underground Storage Tank Statute and Regulations.

Finding: This condition has been satisfied. Underground storage tanks are not proposed.
Analysis: Compliant

Other
29. Applicant shall hire, employ, or otherwise contract for archaeological services within the Mine Boundary. The archaeological services shall be for an archaeological survey of the property that comports with the standards and practices of the industry and shall be conducted prior to any gravel removal activities, up to and including moving of equipment onto the site. The survey shall, at a minimum, include a record search and reconnaissance of the property within the Mine Boundary. If during the reconnaissance, the archaeologist determines that shovel test holes are warranted in specified areas, the reconnaissance shall also include shovel test holes of those specified areas performed on a grid that comports with the industry standard in the areas reasonably calculated to contain potential artifacts.

If the archaeological survey determines artifacts are present, or there is a high probability of the presence of artifacts in the opinion of the archaeologists, then a Tribal Monitor shall be present for the removal of the dirt layers in the high probability area.
The Tribal Monitor shall be paid at the expense of Applicant or its successor in interest. The Tribal Monitor shall undergo any necessary safety training at the expense of applicant or its successor in interest.

All work in the vicinity of found artifacts or remains must immediately stop until the State Historic Preservation Officer (SHPO), Thurston County Historic Commission, and if human
remains, the Thurston County Medical Examiner consult with the Nisqually Tribe and each other
to form a plan of action based on the archaeological findings.
Continued work in the area of the artifact will then be dependant on that plan of action.

Finding: The Archeological Survey has been completed. One area on-site was determined to
need additional study. That area has been marked in the field and will not be disturbed prior to
the additional study.
Analysis: There are no compliance issues with this condition at this time.

30. The operator shall obtain certification from the sender of the construction fill that the
material is “clean” as defined in Section 1.3 of the Settlement Agreement and is suitable for
construction of hills on the property for reclamation and, if approved by Department of Natural
Resources, placement in open water.

Finding: This certification will be required prior to berm-building or stockpiling of soil material
if imported material is to be used. The Port has agreed to obtain the certification. No additional
specific actions are required prior to the commencement of mining.
Analysis: No compliance issue with this condition at this time.

31. No work shall occur on-site during the SEPA and Special Use Permit Review process and the
resolution of any appeals, with exception to the ongoing Remedial Investigation and Feasibility
Study being evaluated by the Washington State Department of Ecology as described in the above
Condition No. 16.

Finding: The SEPA and SUP review and appeal processes have been completed. Therefore, this
condition will not delay the start of mining. Mine segments five and eight have not yet been
released by WDOE for mineral extraction. These two segments will remain unavailable until
cleared by WDOE. Even so, there are six other segments already cleared for mining.
Analysis: Although two segments have yet to be cleared by WDOE, there are no compliance
issues with this condition at this time.

32. Additional conditions may be placed upon this project if a Special Use Permit is approved by
the Thurston County Hearing Examiner.

Finding: This condition has been satisfied. The Hearing Examiner did place additional
conditions on the SUP. They are each discussed individually below.
Analysis: See below.

Hearing Examiner Conditions

A. The Applicant/Operator shall comply with all conditions of the Mitigated Determination of
Non-Significance dated October 24, 2005 (identified above as Exhibit 1, Attachment e).

Finding: Compliance with those conditions is discussed above.
Analysis: No compliance issue with this condition at this time.
B. The operation of the facilities on the site shall comply with all requirements of the Thurston County Mineral Extraction Code Chapter 17.20.

Finding: All mines in Thurston County must comply with the Mineral Extraction Code. In addition to the specific conditions listed in the SEPA and the SUP, the Mineral Extraction Code has a significant condition that has not yet been mentioned. The Code requires that the extraction area be fenced. Fencing must be in place prior to the commencement of mining. Analysis: No compliance issue with this condition at this time.

C. The Special Use Permit shall be reviewed by the Thurston County Hearing Examiner each five years after the effective date of the permit to determine whether the conditions of approval have been complied with or should be amended. The Operator is responsible to ensure that such review has been completed within the five-year time period.

Finding: See Condition 6F above. Analysis: No compliance issue with this condition at this time.

D. The Applicant/Operator shall comply with all conditions of ORCAA Order of Approval for Notice of Construction 01 NOC 116 and any other applicable ORCAA regulations.

Finding: See Condition 26 above. Analysis: No compliance issue with this condition at this time.

E. The Applicant/Operator shall comply with all local, state, and federal permits and regulations.

Finding: This is an on-going condition that commences with the import of fill to the site and continues through the life of the mine. Analysis: No compliance issue with this condition at this time.

F. The Applicant/Operator shall obtain a solid waste handling permit from Thurston County Health Department prior to the recycling of asphalt and concrete.

Finding: To date, an application for a Solid Waste Handling Permit has not been submitted. Recycling of asphalt or concrete cannot commence until such permit is issued. This condition is independent from the mineral extraction conditions. Commencement of mining need not wait for Solid Waste Permit approval. Analysis: No compliance issue with this condition at this time.

G. The Applicant/Operator shall submit a copy of the Washington State Department of Natural Resources approved reclamation plan to Thurston County Development Services prior to any mining activity.

Finding: The reclamation plan was approved by DNR on September 19, 2007. A reclamation sequence map has been submitted to the County. However, the DNR approved reclamation plan
has not been submitted to the County. The approved plan must be submitted prior to the commencement of mining.
Analysis: No compliance issue with this condition at this time.

H. The floor of each excavation area shall be designed and maintained in such a manner that stormwater drainage will flow to the sedimentation pond and will be retained on-site. No stormwater runoff shall be allowed to flow off-site.
Finding: A preliminary stormwater plan has been submitted. The final plan must be submitted, approved and installed prior to the commencement of mining.
Analysis: No compliance issue with this condition at this time.

I. For protection of surface and ground water, all turbid process water and all stormwater shall be retained within the sedimentation pond shown on the site plan.
Finding: A preliminary stormwater plan has been submitted. The final plan must be submitted, approved and installed prior to the commencement of mining.
Analysis: No compliance issue with this condition at this time.

J. All equipment used on the site shall be equipped with mufflers and be properly maintained to limit noise consistent with local and state standards.
Finding: All equipment on-site during the mine preparation process and during mineral extraction must comply with noise standards. Quarterly noise tests conducted by a certified technician, at the expense of the mine operator, must be submitted for the life of the mine.
Analysis: No compliance issue with this condition at this time.

K. Consistent with federal standards and regulations, all loaders and dozers shall be equipped with ambient-sensitive back-up alarms to reduce noise impacts on nearby residentially zoned properties and uses.
Finding: All applicable equipment on-site shall be so equipped prior to use for mine preparation or mineral extraction. A report on back-up alarm systems employed on-site shall be included in the initial noise report.
Analysis: No compliance issue with this condition at this time.

L. The Operator of the mining facility shall visibly post its name, address, and phone number, or the name, address, and phone number of a designated person whom the public can contact to report complaints or violations. (TCC 17.20.190)
Finding: This condition is completed. If and when the site is sold, the posting shall immediately be updated.
Analysis: Compliant.

M. The Operator shall employ reasonable site access control measures, such as locked gates, to prevent illegal dumping of solid waste. (TCC 17.20.180)
Finding: This condition is completed.
Analysis: Compliant.

N. All vehicles leaving the site shall comply with RCW 46.61.635 (escape of load materials and cleaning of vehicles). (TCC 17.20.170)

Finding: This condition will become effective upon commencement of gravel export by truck.
Analysis: No compliance issue with this condition at this time.

O. All truck wheels shall be washed before trucks leave the site and the Operator shall regularly maintain the access road to prevent airborne dust, congestion, air pollution, and safety hazards.

Finding: This condition has not been completed. Prior to the commencement of gravel export by truck, a wheel washing area must be installed and a plan for road cleaning must be submitted and approved by the County.
Analysis: No compliance issue with this condition at this time.

P. Any developed roadway shall conform to the 1999 Thurston County Road Standards and development guidelines.

Finding: Initiated but not completed.
Analysis: The proposed Maytown Road improvements and the internal road design must be submitted to the County, approved by the County and installed prior to the commencement of mining. Tilley Road and I-5 ramp improvements must be approved by the State DOT and installed prior to the commencement of mining. If DOT directs that the I-5 ramp improvements not be completed until the entire Maytown interchange is rebuilt, the Port must either have the timing of this condition amended or refrain from using I-5 northbound to haul gravel until the rebuild is completed. The business plan for the mine shows that 50% of the gravel will be exported by rail and another 10% will travel south on either Tilley Road or I-5. In any case, off-site road improvements cannot use Maytown gravel. Exportation of gravel from Maytown is not permitted until all conditions of approval are satisfied.

Although questions remain with this condition, the applicant is not out of compliance at this time.

Q. The stormwater management system shall conform to the 1994 Thurston County Drainage Design & Erosion Control Manual.

Finding: A preliminary stormwater plan has been submitted. The final plan must be submitted, approved and installed prior to the commencement of mining.
Analysis: No compliance issue with this condition at this time.

R. Any utility work within the Thurston County Right of Way shall conform to the 1999 Thurston County Road Standards and Chapter 13.56 Thurston County Code.
Finding: This condition has not been completed. It must be completed prior to the commencement of mining. This condition will be handled in the design approval for road improvements.
Analysis: No compliance issue with this condition at this time.


Finding: A grading plan has not been submitted. The plan must be submitted and approved, and the work field approved by the County prior to the commencement of mining.
Analysis: No compliance issue with this condition at this time.

T. All development on the site shall be in substantial compliance with the final approved site plan. Any expansion or alteration of this use will require approval of a new or amended Special Use Permit. The Development Services Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

Finding: Some known alterations of the approved use will be required and additional alterations may be forthcoming.
Analysis: Any expansion or alteration will be reviewed under this section. As changes are known, the Department will make a determination regarding approval authority. To date, the known alterations include amended time deadlines for submittal of well monitoring, and a timing change for I-5 ramp improvements. The Department has determined that these alterations are not major and therefore, do not rise to the Hearing Examiner level. As such, staff will be the approval authority. Any alterations must either be approved prior to commencement of mining or prior to commencement of a specific activity, whichever is applicable.

U. Active mining shall be limited to a series of two mining areas at one time. Upon completion of mineral extraction from each mining area, that mining area shall be reclaimed. Reclamation may occur simultaneously with mining in subsequent mining areas so long as active mining is occurring in no more than two mining areas at one time.

Finding: This condition shall be effective from the commencement of mining through the life of the mine.
Analysis: Because DOE has now cleared other segments for mining it is no longer necessary for segments one and two to be the first to be mined.

V. Data from on-site groundwater monitoring stations shall be provided to the owners of the private wells that are subject to the baseline domestic well inventory required by MDNS condition of approval number 6 at the same time as that data is provided to the County.

Finding: As noted above, this condition has not been completed and the deadline has passed. Even so, most of this information has now been submitted to the County. Copies of the information sheets submitted to the County were forwarded by the Port to the owners of the private wells on February 5, 2009.
Analysis: Again, staff conclude that the deadline was applied because there was some sense that mining activities were imminent. Although the deadline was not met, the substantive requirement of the condition can still be met.

**W. Copies of any reports or records submitted to federal, state, or regional officials or agencies shall be made available to the County upon request, including a record of the source of any asphalt, concrete, or soils imported from off-site and stored on-site.**

Finding: This is an on-going condition that commences with the import of fill to the site and continues through the life of the mine.
Analysis: No compliance issue with this condition at this time.

Final Analysis: As a review of the entire list of conditions will demonstrate, a majority of the conditions must be met prior to beginning significant land disturbing or mining activities. Many other conditions only come into play when mining is underway. A staff site visit on January 14, 2010 found that no significant land disturbing activity has occurred. As a result, taken in total, several missed deadlines notwithstanding, it is the staff assessment that the applicant is substantially in compliance with the conditions of SEPA and the SUP at this time. This document does identify items that will require additional work by the applicant to remain in compliance, including applying for an administrative amendment, and staff will carefully monitor those items.