



Project No. 2010102512 SUPT
 Appeal Sequence No. _____

THURSTON COUNTY
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Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW Sharon Coontz *Friends of Rocky Prairie*
 on this 13 day of January 2011, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on Dec. 30, 2010 by Sharon Rice relating to Maytown Sand & Gravel Five Year Review, SUPT-02-0612

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

- Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner: 20.54.040
20.54.040(1)
Citations on attached memo
1. Zoning Ordinance TCC 20.54.070(2)(e); 20.60.070(3); 20.54.030; 20.54.010
 2. Platting and Subdivision Ordinance _____
 3. Comprehensive Plan Thurston Cty. Comp. Plan, Chapter 3, Section IV
 4. Critical Areas Ordinance TCC 17.15; Ordinances 14260 & 14380
 5. Shoreline Master Program _____
 6. Other: SEPA, WAC 197-11-600;

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

Friends of Rocky Prairie, V.S. Coontz
 APPELLANT NAME PRINTED
V. Sharon Coontz
 SIGNATURE OF APPELLANT
 Address 3716-85th NW Olympia WA
 Phone 360-866-7596

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BEFORE THE BOARD OF THURSTON COUNTY COMMISSIONERS

In the Matter of the Application of

SUP No. 02-0612

MAYTOWN SAND AND GRAVEL,
LLC

MEMORANDUM OF NOTICE OF
APPEAL OF THE HEARING
EXAMINER'S DECISION ON THE
FIVE YEAR REVIEW

Notice of Appeal for the Five year
Review Decision of SUP 02-0612

No. 2010102512

Pursuant to the instructions found in the Appeal of Hearing Examiner Decision attached to the Hearing Examiner's December 30, 2010, decision No. 2010102512 for SUPT-02-0612, Friends of Rocky Prairie submits this written memorandum providing the specific section, paragraph and page of the regulation interpreted erroneously by the Hearing Examiner in the above titled decision. All exhibits, attachments, and testimony from the Five Year Review are incorporated by reference to this Notice of Appeal.

A separate Standing Document is attached to this memorandum as per the Notice of Appeal instructions.

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1 **List of Zoning Ordinances, Comprehensive Plan Sections, and Other Provisions**
2 **Appellant Alleges the Hearing Examiner Interpreted Erroneously or Failed to Properly**
3 **Apply**

4 For the sake of clarity and to closely adhere to the Appeal Form, the following issues
5 are discussed in this Notice of Appeal:

- 6 1. TCC 20.54.070(21)(e)
- 7 2. TCC 20.54.030
- 8 3. TCC 20.54.040
- 9 4. TCC 20.54.040(1)
- 10 5. TCC 20.54.010:
- 11 6. TCC 17.15
- 12 7. Resolution No. 14260 or 14380
- 13 8. Thurston County Comprehensive Plan, Chapter 3, Section IV
- 14 9. State Environmental Policy Act WAC 197-11-600

15 The specific section, paragraph, and page of regulation interpreted erroneously by the
16 Hearing Examiner are detailed in the sections below. The controlling code for Thurston County
17 Code for Five Year Reviews is TCC 20.54.070(21)(e) and it only applies to special uses for
18 mineral extraction. None of the 63 other special uses found in this chapter have a Five Year
19 Review provision. Clearly the County is concerned about the on-going impacts that mineral
20 extraction activities have on the environment and have created a process that allows for
21 changes to the mining operation if it fails to comply with the chapter even after the use is
22 authorized.

23 //

24 //

1 **Zoning Ordinances:**

2 a. **TCC 20.54.070(21)(e):** The Hearing Examiner erroneously interprets or
3 fails to properly apply Thurston County Code 20.54.070(21)(e) in several instances. First, on
4 page 42 in the second paragraph under the Discussion section, the Hearing Examiner
5 erroneously states that the Five Year Review process allows for “clerical” amendments to the
6 Special Use Permit (SUP) and the Mitigated Determination of Non-Significance (MDNS).
7 This conclusion is unsupported by the plain language of TCC 20.54.070(21)(e) and violates
8 the State Environmental Policy Act (SEPA). The language of TCC 20.54.070(21)(e) states the
9 “approval authority may impose additional conditions upon the operation if the approval
10 authority determines it is necessary to do so to meet the standards of this chapter, as
11 amended.” Nothing in this section allows the Hearing Examiner to change existing conditions
12 of an MDNS.
13

14 The Applicant requested two amendments to the MDNS, Conditions 6A and 6C, and
15 the County decided the request was a new decision to be made on the SUP. Therefore, there
16 has to be a SEPA process before the County renders the decision. It was improper for the
17 Hearing Examiner to find jurisdiction to hear these issues. Furthermore, it was improper for
18 the Hearing Examiner to request language from the Applicant after the filing of the Post-
19 Hearing Order stating that no amendment process is necessary because the Hearing Examiner
20 does not have jurisdiction. *See*, page 9 footnote 3. The testimony of Mike Kain during the
21 Five Year Review makes it clear that when an applicant seeks to change conditions of a
22 special use permit TCC 20.60.020(3) requires the submittal of a new application and the
23 initiation of a SEPA process. *See*, County’s Exhibit 1 pg 6-7, Attachments o(1), o(2), v from
24 the record in the Five Year Review.
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1 The Hearing Examiner, under the Conclusions Based on Findings section, paragraph
2 5C, page 46, erroneously interprets TCC 20.54.070(21)(e) by holding the Five Year Review
3 process does not open an authorized mine for review “as if it were a proposed mine...” The
4 error is that the Five Year Review is not concerned with proposed mines and yet it still requires
5 that the permit comply with the standards of the chapter. The Hearing Examiner’s premise that
6 standards of the chapter apply only to proposed mines is incorrect. This flawed reasoning leads
7 the Hearing Examiner to incorrectly apply the standards of the chapter to this permit during the
8 Five Year Review.

10 The standards of chapter TCC 20.54 referred to in TCC 20.54.070(21)(e) are found in
11 many sections of the chapter including TCC 20.54.030. This section, titled *Status of special*
12 *use*, states, “Any use for which a special use is authorized by the approval authority and which
13 complies with the specific requirements of this chapter and those of other applicable chapters
14 of this title shall be deemed to be a permitted use on the lot on which it is thus permitted.”
15 (Emphasis added.) This section does not say, “any use for which a special use is proposed,”
16 but instead makes it clear that any use that is already authorized and which complies with this
17 chapter is “thus permitted.” It is important to note this section further states, “Once a special
18 use has been authorized, however, the use shall not be enlarged, extended, increased in
19 intensity, or relocated unless an application is made for a new or amended special use
20 authorization.” TCC 20.54.030. It says nothing about the use being reduced, lessened, or
21 decreased in intensity.

24 TCC 20.54.030 holds that for a special use to be permitted, even once the approval
25 authority authorizes it, it still must also comply with the requirements of this chapter and
26 “other applicable chapters of this title” in order to be a “permitted use.” The clear language of

1 this section applies to uses already authorized and not just proposed uses. Therefore, the
2 process for a Five Year Review established in TCC 20.54.070(21)(e), which requires a
3 determination of whether the standards of TCC 20.54 are being met, allows for the Hearing
4 Examiner to review whether the permit as authorized meets the standards of TCC 20.54. In
5 order to do this, the Hearing Examiner must examiner whether the permit as authorized also
6 “complies with the specific requirements of this chapter and those of other applicable chapters
7 of this title.” TCC 20.54.030.

9 With this in mind, we turn to other sections of this chapter which are or would have
10 been required to have been met once the permit was authorized in order for the permit to “be
11 deemed a permitted use on the lot on which it is thus permitted.” TCC 20.54.030.

12 b. **TCC 20.54.040:** This section must certainly be considered a “standard
13 of this chapter” as it is titled, *General Standards*. However, under the Conclusions Based on
14 Findings section, paragraph 5 A, page 46, the Hearing Examiner fails to apply the clear
15 language of TCC 20.54.040, which states that “all uses authorized as special uses shall meet
16 the following conditions.”(Emphasis added.) The plain language of this section as well as
17 TCC 20.54.030 make it clear that these sections apply to uses already authorized. The Hearing
18 Examiner’s failure to apply this standard led to her erroneously applying TCC 20.54.040 and
19 TCC 20.54.040(1).

20 TCC 20.54.040(1) states: “Plans, Regulations, Laws. The proposed use at the specified
21 location shall comply with the Thurston County Comprehensive Plan and all applicable
22 federal, state, regional, and Thurston County laws or plans.”

23 The Hearing Examiner improperly focused on one word, “proposed,” in this section as
24 opposed to reading the section as a whole. If one were to interpret TCC 20.54.040 to only
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1 apply to proposed uses it would render the preamble in which it states “all authorized uses” to
2 have no meaning. This is improper statutory construction. *See, Whatcom County v.*
3 *Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

4 A proper reading and application of TCC 24.54.040, including the preamble, which
5 states “all authorized uses shall meet the following conditions” makes it clear that the
6 “authorized use” must comply with TCC 17.15 (2002 CAO), which was an “applicable
7 Thurston County law” when the use was authorized. However, because the permit failed to
8 account for mima mounds, prairie, and butterfly habitat as required by TCC 17.15 it was not a
9 “permitted use” as defined by TCC 20.54.030. It was, and is, out of compliance with the
10 standards of this chapter. The record developed during the Five Year Review is full of
11 evidence from both County and State officials, as well as the applicant’s own witnesses as to
12 critical areas that were unaccounted for in the initial surveys that led to the authorization of
13 the permit.
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16 The Hearing Examiner erroneously failed to apply the General Standards found in TCC
17 20.54.040 during the Five Year Review by concluding they apply only to proposed uses. If the
18 Hearing Examiner correctly applied TCC 20.54.040 as an applicable standard under TCC
19 20.54.070(21)(e) there is no question that the 2002 CAO applies to this permit and if the
20 permit does not comply with the 2002 CAO conditions must be added by the Hearing
21 Examiner to meet the standards of TCC 20.54 as required by the Five Year Review process.
22

23 The SUP also does not comply with Critical Area Ordinances (CAO) in effect when the
24 permit was authorized or with the interim CAO because it allows for the destruction of native
25 outwash prairie, mima mounds, and habitat for several at-risk butterfly species. *See, Finding*
26

1 | 72 and 73 on page 29 of the decision.¹ Additionally, the Washington State Department of
2 | Natural Resources prairie specialist Joe Arnett testified, when asked about Mine Area 1,
3 | “There’s nothing ambiguous about it. It is prairie by a scientific definition.” There was also
4 | evidence presented that at-risk butterflies and habitat were found in Mine Area 1 in 2009. *See*,
5 | Attachment mm to the Staff Report, letter from WDFW.
6 |

7 | A primary reason Mine Area 1 is included in the mining plan and was not protected at
8 | the time was because it was assumed to not be prairie habitat, but no one ever really surveyed
9 | it. Roy Garrison, the applicant’s environmental lead who prepared the Environmental Checklist
10 | and Habitat Management Plan for the original SUP application, testified in the Five Year
11 | Review that the interior of Mine Area 1 was not investigated for butterfly habitat/prairie plants,
12 | because they assumed that any area that had been logged or disturbed couldn’t have a
13 | dominance of prairie species. This assumption turned out to be wrong. Additionally, Mr.
14 | Garrison testified that there were mounds in Mine Area I. *See*, Testimony Day 2, part 5.
15 |

16 | The testimony of Cindy Wilson, County staff, explains how Mine Area 1 was never
17 | adequately examined for prairie species even though there are mima mounds and prairie soils
18 | there. *See*, Testimony Day 3 part 6. As a scientist, her opinion was that it would have
19 | qualified either as prairie or recoverable prairie after the invasive Douglas Fir were cut down
20 | by 1996 had there been a proper investigation in 2002-2005. Mr. Garrison admitted under
21 | cross examination by Mr. Fancher, that there had been no butterfly surveys done in Mine Area
22 | 1, saying “ When we delineated the prairie and sold it to DFW, there was no need to go interior
23 | in non-prairie” to look for butterflies. *See*, Testimony Day 2, part 5. This was based on the
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26 | _____
¹ There was also extensive testimony during the hearing from officials from the Department of Natural Resources and Washington Department of Fish and Wildlife regarding the existence of prairie in Mine Area 1.

1 false assumption that Mine Area 1 was non-prairie because it had been logged. Logging, as
2 Ms. Wilson's testimony pointed out, removes the invasive species and allows the prairie plants
3 to grow.

4 Despite this overwhelming evidence presented during the Five Year Review hearing,
5 the Hearing Examiner held under section Conclusions Based on Findings, paragraph 5 D, page
6 47 that, "There is no evidence of noncompliance with any condition relating to critical areas
7 protection except MDNS 10."² Therefore, the Hearing Examiner erred by failing to not apply
8 the standards found in TCC 20.54.040(1) as required during a Five Year Review pursuant to
9 TCC 20.54.070(21)(e) and to allow for the destruction of known critical areas.

11 **2. Comprehensive Plan:**

12 The special use found in SUPT-02-0612 does not comply with the specific
13 requirements of TCC 20.54 because it did not, and does not; comply with the Thurston
14 County Comprehensive Plan, which it must do under TCC 20.54.040(1). Under the
15 Conclusions Based on Findings section, paragraph 5 B, page 46, the Hearing Examiner failed
16 to apply the Thurston County Comprehensive Plan Chapter 3, Section IV thereby violating the
17 Policy that mining activities should not alter significant geologic features including mima
18 mounds. Finding 66 on page 28 states, "County Staff present at the January and October 2010
19 site visits observed Mima mounds and canary grass and waded through standing water within
20 Mine Area 1." Additionally, the applicant's own witness, Roy Garrison, testified to the
21 presence of mounds in Mine Area 1 (see above). The Thurston County Comprehensive Plan
22 makes it clear that mining should not destroy mima mounds. Chapter 3, Section IV, objective
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26 ² MDNS 10 relates to placing proper signage around the critical area buffer zone.

1 A, policy 8 states, “Proposed mining activities should not alter significant geologic features
2 such as mima mounds.”

3 The Hearing Examiner ignores the testimony of the County and others on this issue and
4 instead concludes under the Conclusions Based on Findings section, paragraph 5 C, page 46,
5 that “evidence supports the conclusion that no critical areas that should have been protected
6 pursuant to the 2002 CAO were missed...” Yet any mima mounds found on the site in 2010
7 certainly existed in 2005.
8

9 As detailed above, standards of TCC 20.54 found in TCC 20.54.040(1), which apply
10 during a Five Year Review, include the Thurston County Comprehensive Plan. Therefore, the
11 Hearing Examiner erred by finding the SUP complies with the Comprehensive Plan. *See*,
12 Conclusions Based on Findings, paragraph 5 D, page 47. The Hearing Examiner’s decision
13 that even if critical areas were missed during the initial review “the County and the Applicant
14 are equally bound by the issued permit” is misplaced and would lead to the destruction of
15 critical areas. As evident by the Five Year Review, the “approval authority may impose
16 additional conditions upon the operation” if necessary. Therefore, the permit does not prevent
17 the County from changing the operations of the mine if it is necessary to meet the standards of
18 the chapter. As detailed above, protection of critical areas is a standard of this chapter;
19 therefore the County is not bound by conditions that would violate the law.
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22 Under a Five Year Review, the Hearing Examiner has the authority to limit or remove
23 certain areas of a previously authorized mine. Evidence of the Hearing Examiner’s authority
24 to restrict a previously issued permit is found under the Discussion section, second full
25 paragraph, page 43. The Hearing Examiner references the Five Year Review decision in
26 *Lakeside Industries 5 Year Review (SUP 14-88, SUP 98-067)*. In this case the permit held by

1 Lakeside Industries initially allowed it to mine to a depth of 60 feet conditioned by an MNDS
2 that prohibited mining into the water table. Evidence brought forward during the Five Year
3 Review alleged the water table had been breached; however it was subsequently determined
4 this was not so.

5
6 Yet despite finding the water table was not breached, the Hearing Examiner restricted
7 excavation to a maximum of 40 feet throughout the 50-acre mine site. *See*, page 43.

8 Therefore, while the “footprint” of the mine was not reduced, a significant amount of valuable
9 mineral material was removed from the control of the applicant in order to protect the
10 environment. It is important to note that the reduction in available minerals occurred after
11 mining started on the site, which is in contrast to this instance where no mining activity has
12 occurred. There is no question that the Hearing Examiner can place conditions on a permit
13 during a Five Year Review that diminish the amount of previously anticipated mining area. If
14 mining goes forward as planned under this permit, critical areas will be destroyed. Had the
15 Hearing Examiner properly interpreted and applied TCC 20.54.070(21)(e), she had the
16 authority to change the size of the mining area in order to protect the environment. Because
17 she erred, if her decision is not reversed, these critical areas are now likely to be lost forever.

18 19 3. SEPA

20 The Hearing Examiner’s decision under Conclusions Based on Findings, paragraph 5C,
21 page 46, that “The record contains no evidence establishing a lack of material disclosure
22 during the 2002 through 2005 review,” is unsupported by the evidence and contrary to SEPA
23 case law. Also, the determination as whether there was a “lack of material disclosure” is a
24 SEPA standard and was not fully argued before the Hearing Examiner during the Five Year
25 Review because the appropriate forum would be a SEPA process. However, as detailed above,
26

1 | there was ample evidence presented during the Five Year Review that certain critical areas,
2 | particularly Mine Area 1, were not properly surveyed and do in fact contain critical areas and
3 | were only excluded from protective regulations because they were not disclosed.

4 | Case law interpreting WAC 197-11-600 has found a lack of material disclosure in
5 | instances when there was some disclosure of impacts but not full disclosure. *See, Kiewit*
6 | *Construction Group Inc. v. Clark County*, 83 Wn.App. 133, 142, 920 P.2d 1207 (1996). In this
7 | case the court upheld the Clark County Board of Commissioners' decision to require
8 | additional environmental studies for an asphalt plant because the applicant failed to disclose
9 | the full effect of truck traffic on a bicycle and pedestrian path. *Id.*

10 | In the present case, there is clear evidence that there was no disclosure of the prairie
11 | habitat that exists in Mine Area 1 prior to issuance of the MDNS and SUP. Under WAC 197-
12 | 11-600 and SEPA case law this is lack of material disclosure. For the Hearing Examiner to
13 | decide otherwise is incorrect.

14 | Additionally, WAC 197-11-600 also requires a new threshold determination if new
15 | information (apart from lack of material disclosure or misrepresentation) is discovered.
16 | Evidence provided by the applicant's environmental consultant, Mr. Garrison, indicates that
17 | the area is a very dynamic place and it is possible that site conditions have changed since the
18 | initial studies were done over five years ago. Mr. Garrison was asked how it could be that
19 | Washington Department of Fish and Wildlife could find streams and wetlands that were not in
20 | original environmental studies. See, Testimony Day 2, part 5. Mr. Garrison admits that site
21 | conditions may well have changed in the last 5 years, including there being new critical areas,
22 | stating, "Our ecosystem is dynamic. And changes in groundwater, change in climatic
23 | conditions, all those things play into it." See, Testimony Day 2, part 5.

1 The environmental studies conducted nearly a decade ago are stale and out of date.
2 State Environmental Policy Act law requires a new threshold determination when faced with
3 new information that a proposal will have a probable significant adverse impact on the
4 environment.

5 **4. Other Issues:**

6 The Hearing Examiner, under Conclusions Based on Findings, paragraph 7, page 47
7 states, “[e]xpiration has been officially precluded.” This section continues, claiming there is
8 no evidence “upon which the Examiner could or should invalidate the permit.” This is not so.
9 In fact, the SUP was granted based on explicit conditions (lettered A through W). Condition
10 A states, “The Applicant/Operator shall comply with all conditions of the Mitigated
11 Determination of Non-Significance dated October 24, 2005 (identified above as Exhibit 1,
12 Attachment e).” The Mitigated Determination of Non-Significance Condition 6A states,
13 “Prior to any mining activity and within one-year of final issuance of the Special Use
14 Permit...issuance the operator will field-verify off-site wells in the following areas.” Also,
15 MDNS Condition 6C required a groundwater survey to test 17 monitoring wells and begin
16 within 60 days of the final issuance of the SUP.
17

18 It is undisputed that the Applicant did not comply with MDNS Conditions 6A and 6C.
19 *See, Findings*, paragraph 36, page 20. Therefore two of the conditions upon which the SUP
20 was granted were never complied with and is evidence to invalidate the permit.
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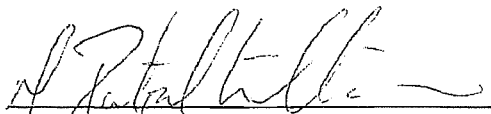
22 **5. Relief Sought:**

23 Friends of Rocky Prairie respectfully requests the Board to grant the following relief:
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- 25 A. Reverse the Hearing Examiner’s decision;
26 B. Grant such further relief as the Board deems appropriate.

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Dated this 13th day of January 2011



The Law Offices of M. Patrick Williams
M. Patrick Williams, WSBA #37063
Attorney for Appellant Friends of Rocky Prairie

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BEFORE THE HEARING EXAMINER OF THURSTON COUNTY

In the Matter of the Application of

MAYTOWN SAND AND GRAVEL,
LLC

For the Appeal Five of Year Review of
SUP 02-0612

No. 2010102512

SUP No. 02-0612

STANDING DECLARATION OF
SHARRON COONTZ,
REPRESENTATIVE OF FRIENDS OF
ROCKY PRAIRIE

I, SHARRON COONTZ state as follows:

1. My name is Sharron Coontz and I reside in Thurston County, Washington.
2. I am over 21 years of age and have personal knowledge of the statements contained herein.
3. Friends of Rocky Prairie (FORP) was formed almost four years ago by neighbors of the proposed Maytown site as a non-profit organization dedicated to saving and preserving West Rocky Prairie.
4. The proposed Maytown Sand and Gravel mine is located within West Rocky Prairie.

1 5. I am President of Friends of Rocky Prairie.

2 6. FORP represents the interests of many neighbors whose lives and livelihoods
3 would be negatively affected by development of any kind, and in particular a gravel mine, on
4 the Maytown site.

5 7. Those members whose livelihoods could be negatively affected by mining at the
6 site are concerned with traffic safety and noise near their businesses.

7 8. The Washington State Department of Fish and Wildlife, refers to the area as a
8 "rare habitat matrix unique to Western Washington." See, Exhibit A.

9 9. The area is currently the center of a 3,000-acre wildlife corridor stretching from
10 historic Millersylvania State Park south to a State Fish and Wildlife preserve. It contains rare
11 Native Outwash Prairie, oak woodlands, mima mounds, and wetlands and has historically been
12 home to the federal candidate Taylor Checkerspot butterfly as well as several other at-risk and
13 endangered animal and plant species.

14 10. Friends of Rocky Prairie was formed in 2007 to oppose the Port of Tacoma's
15 plan to build a train and truck cargo transfer center and other businesses such as a municipal
16 solid waste transfer station in the middle of this extremely sensitive site. Friends of Rocky
17 Prairie built a large coalition to oppose this use, garnering the bi-partisan support of such
18 figures as Rep. Richard DeBolt and Sen. Karen Fraser, as well as neighboring granges,
19 churches, and businesses. As a result of this organized effort, Friends of Rocky Prairie
20 succeeded in keeping the facility out of the area.

21 11. During this time, in a further effort to protect this sensitive area from
22 inappropriate use, Friends of Rocky Prairie gathered the names of approximately 2,000 people
23 who supported Friends of Rocky Prairie's request of the County that the property, which had
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1 several hundred acres designated Rural Resource Industrial with the rest set at Rural
2 Residential 1 house per 5 acres, be down-zoned to Rural Residential 1 per 20, the lowest
3 density available to private property. The County Commissioners visited the property, listened
4 to expert testimony on the value of prairies and of this property in particular, and after many
5 briefings and hearings, not only unanimously voted to support Friends of Rocky Prairie's
6 proposed rezone, but also expanded the area covered by it.
7

8 12. Several current members of Friends of Rocky Prairie, prior to the formation of
9 the organization, actively opposed the gravel mine when it was originally proposed in 2002
10 and also opposed it during the proceedings leading up to the reissued MDNS when the
11 negotiated SUP was issued in 2005.

12 13. Many other members heard about the organization and were concerned about
13 noise, traffic, water quality and quantity from the Port's proposed industrial use (the South
14 Sound Logistics Center, or SSLC, was its name). Other interested parties who joined the
15 group included Millersylvania State Park users and supporters as well as other people
16 interested in saving prairies and prairie plant and animal species, as well as sensitive wetlands
17 on site as well as nearby.
18

19 14. Members once again became concerned when it was discovered that the Port
20 was trying to sell the property and was claiming that the old gravel-mining permit was still
21 valid. This claim was made despite the fact that the environmental studies for the mine dated
22 to 2002 and despite the fact the Port was out of compliance with the Special Use Permit.
23

24 15. I submitted documents, testified, and cross-examined witnesses during the Five
25 Year Review in my role as representative of Friends of Rocky Prairie.

26 16. The Hearing Examiner's decision fails to protect critical areas including, prairie

1 habitat, at-risk butterfly species, and mima mounds.

2 17. The Five Year Review is designed to ensure a mining activity meets the
3 standards found in the Special Use chapter of the Thurston County Code.

4 18. This includes protections for the environment and critical areas.

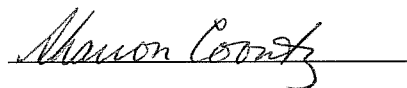
5 19. Friends of Rocky Prairie falls within the zone of protected interests of the Five
6 Year Review because its goal is to protect and maintain unique prairie habitat.
7

8 20. The Hearing Examiner's decision directly and negatively affects this interest.

9 21. Therefore, Friends of Rocky Prairie is an aggrieved party and therefore standing
10 must be granted.

11
12 I declare under penalty of perjury under the laws of the State of Washington that the
13 foregoing statement is true and correct.
14

15
16 Signed and dated at Olympia, Washington, this 13 day of January, 2011.

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19 Sharron Coontz, President FORP
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