



Notice of Hearing Examiner Decision

12/13/2021

To: Interested Parties and Parties of Record

RE: Project Name: Dickey Pit Development Agreement
 Applicant: Port Orchard Sand & Gravel Company
 400 VALLEY AVE NE
 PUYALLUP, WA 98372
 Application: Development Agreement
 Permit Number: #21-01506

The Kitsap County Hearing Examiner has recommended **APPROVAL** of the land use application for **Permit #: 21-01506 Dickey Pit Development Agreement, subject to the conditions outlined in this Notice and included Decision.**

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: Applicant and/or Rep: Levi Holmes, levi@jwigroup.com; Holly Blinn, holly.b@jwigroup.com; Patty Charnas, Patty.C@jwigroup.com
Owner: Port Orchard Sand & Gravel Company, 400 VALLEY AVE NE
PUYALLUP, WA 98372 & Stoneridge Company LLC, 3599 NW CARLTON ST,
SILVERDALE, WA 98383
Health District
Public Works
Parks
Navy

DSE
PEP
Kitsap Transit
Central Kitsap Fire District
Central Kitsap School District
Puget Sound Energy
Water Purveyor
Sewer Purveyor
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA Dept of Transportation/Aviation
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
WA State Dept of Transportation
WA State Dept of Transportation Aviation Department: Patrick T.O. Wright,
WrightP@wsdot.wa.gov; T.S. Platts, PlattsT@wsdot.wa.gov
Interested Parties: Apex Airport - Bill Roark, wbroark@wavecable.com; Kenny
Henrichsen, leroy00001@gmail.com; Jim Short, jimshort@comcast.net; John &
Margaret Stasny, bluebird-apex@highstream.net; Alan & Susan Anderson, PO
BOX 3621 SILVERDALE, WA 98383-3621

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	No. 21-01506
)	
Levi Holmes, on behalf of)	Dickey Pit
Port Orchard Sand & Gravel Company, Inc.,)	Development Agreement
and Stoneridge Washington, LLC)	
)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Development Agreement</u>)	AND RECOMMENDATION

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the proposed Development Agreement between Kitsap County and Port Orchard Sand & Gravel Company, Inc., and Stoneridge Washington, LLC, concerning the potential future development of a former gravel mine site with a mix of residential and small-scale commercial uses, at 9575 Dickey Road NW, be **APPROVED** by the Kitsap County Board of Commissioners.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on November 18, 2021, using remote access technology. The record was left open until November 29, 2021, to allow any member of the public having difficulty connecting to the remote hearing to submit written comments in lieu of live testimony. No additional public comments were submitted, and, accordingly, the record closed on November 29, 2021.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Liz Williams, County Department of Community Development Interim Program Manager
Melissa Shumake, County Senior Planner
Levi Holmes, Applicant Representative
Bill Roark

Exhibits:

The following exhibits were admitted into the record at the open record hearing:

1. Staff Report, dated November 10, 2021
2. 2019 Comprehensive Plan Amendment (CPA 18-00495) Staff Report, dated January 10, 2020
3. Kitsap County Ordinance No. 587-2020, adopted April 27, 2020

*Findings, Conclusions, and Recommendation
Kitsap County Hearing Examiner
Dickey Pit Development Agreement, No. 21-01506*

4. Kitsap County Resolution No. 032-2020, dated February 24, 2020
5. Dickey Pit Development Agreement, received March 3, 2021
6. SEPA Environmental Checklist, dated April 8, 2021
7. Notice of Application, dated June 3, 2021
8. Comments:
 - a. Comment from Washington State Department of Transportation (WSDOT) – Aviation Division, dated June 15, 2021
 - b. Comment from John and Margaret Stasny, dated June 16, 2021
 - c. Comment from Bill Roark, dated June 14, 2021
 - d. Comment from WSDOT – Aviation Division, dated November 2, 2021
9. Kitsap County Resolution No. 147-2021, dated August 16, 2021
10. Revised Dickey Pit Development Agreement, received October 18, 2021
11. Programmatic Determination of Nonsignificance, dated October 19, 2021
12. SEPA Comment from WSDOT – Aviation Division, dated November 1, 2021
13. Notice of Public Hearing, published November 3, 2021
14. Critical Areas Map, dated November 5, 2021
15. Certification of Public Notice, dated November 3, 2021
16. Staff Presentation
17. Hearing Sign-In Sheet

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Levi Holmes, The JWJ Group, LLC, on behalf of Port Orchard Sand and Gravel Company, Inc., and Stoneridge Washington, LLC (Applicant), requests that the Hearing Examiner recommend approval of a proposed Development Agreement (DA) between Kitsap County (County) and the Applicant concerning the potential future redevelopment of an approximately 138-acre property, which previously served as the site of a gravel mine, with a mix of residential and small-scale commercial uses. The property is located at 9575 Dickey Road NW.¹ *Exhibit 1, Staff Report, pages 1 through 4; Exhibit 10.*
2. County staff determined that the DA application was complete on May 20, 2021. On or around June 3, 2021, the County provided notice of the application by publishing notice in the County’s publishing newspaper of record and by mailing or emailing notice to property owners within 800 feet of the subject property and to reviewing departments and agencies. The County’s notice materials stated that written comments on the proposal

¹ The property is identified by Kitsap County Assessor’s Tax Account Nos. 182501-3-031-2003, 182501-4-026-2008, 192501-1-023-2006, 192501-2-008-2003, 192501-2-009-2002. *Exhibit 1, Staff Report, page 1.* Legal descriptions of the subject parcels are included with the Revised Dickey Pit Development Agreement. *Exhibit 10.*

could be submitted up until seven days before the open record hearing associated with the application. On November 3, 2021, the County provided notice of the open record hearing associated with the application by mailing or emailing notice to property owners within 800 feet of the subject property and to interested parties, posting notice on-site, and publishing notice in the *Kitsap Sun*. *Exhibit 1, Staff Report, pages 1, 2, and 11; Exhibit 7; Exhibit 16.*

3. The County received comments on the proposal from members of the public and reviewing agencies in response to its notice materials, all of which concerned the proposal's compatibility with the Apex Airport located directly to the northwest of the subject property. Specifically:
 - The Washington State Department of Transportation (WSDOT) Aviation Division raised concerns that the proposed Development Agreement would allow for incompatible development adjacent to the airport. WSDOT noted that the Growth Management Act (GMA) recognizes the airport as an essential public facility and requires the County to discourage incompatible uses adjacent to the airport. WSDOT stated that property located near the airport could experience nuisances in the form of low flying aircraft, aircraft engine and propeller noise, vibrations, and exhaust fumes. WSDOT later submitted a comment on the environmental review of the proposal, which noted that it has been in consultation with the airport ownership and the Applicant, and provided recommendations for open spaces near the airport, requested to review any future development plans for potential airspace hazards, and requested that title notice include information regarding airport operations.
 - John and Maggie Stasny requested information about whether the proposal would comply with GMA requirements for development located near the Apex Airport and about any potential mitigation measures to ensure that development activity would not impede airport operations, noting that the Apex Airport would serve as the area's only public use airport during planned upgrades to the Bremerton National Airport.
 - Bill Roark submitted a comment stating that he serves as President of the Apex Airport Owners Improvement Association (APOIA), which owns and operates Apex Airport. He noted that Apex Airport is a public use airport that has been in operation since 1946 and is considered an essential public facility. Mr. Roark stated that state law requires the County to discourage the siting of incompatible uses within 5,000 feet of the airport and requested that input from the airport and WSDOT be considered during site planning.

Exhibit 1, Staff Report, pages 11 and 12; Exhibit 8; Exhibit 12.

Background

4. The approximately 138-acre property is generally located in the western portion of the Silverdale Unincorporated Urban Growth Area. The property was previously used as a gravel mine and has been extensively excavated in some portions, with other portions of

the property consisting of heavily wooded areas. Prior to filing the current DA request, the Applicant submitted a request for a site-specific Comprehensive Plan amendment, which requested that the property's Comprehensive Plan land use designations be changed, from the Urban Industrial and Mineral Resource Overlay/Urban Industrial designations to the Urban Low Intensity Commercial and Urban Low-Density Residential designations, and that the property's zoning classifications be changed, from the Industrial and Industrial with Mineral Resource Overlay classifications to the Neighborhood Commercial and Urban Low Residential classifications. *Exhibit 1, Staff Report, pages 1, 2, and 5; Exhibit 2; Exhibit 3.*

5. On February 4, 2020, the Kitsap County Planning Commission voted to recommend approval of the Comprehensive Plan Amendment application and, on February 18, 2020, adopted findings in support of its recommendation. On April 27, 2020, the Kitsap County Board of County Commissioners approved the site-specific Comprehensive Plan Amendment application through Ordinance 587-2020, with conditions required to be addressed in a Development Agreement (DA) between the County and Applicant. These conditions require that the DA:
- Specify that certain reviewing agencies, tribes, and parties would be provided advance notice and opportunity to review development proposals that would occur on the site;
 - Identify project-level permitting processes;
 - Identify project-level SEPA processes;
 - Specify certain measures that the Applicant would implement to ensure compatibility with surrounding industrially zoned properties, including an adjacent mine site and the Apex Airport;
 - Specify requirements that the Applicant dedicate a portion of future dwelling units to affordable housing and through the acquisition of transferable residential development rights;
 - Identify the location and right-of-way design standards for a proposed road between Dickey Road and the western parcel boundary;
 - Identify the location and design standards of non-motorized facilities to connect to Dickey Road, Willamette-Meridian Road, and Apex Airport Road;
 - Identify the location and design standards of a regional north/south non-motorized route through the site; and
 - Provide factors and considerations for the potential dedication of public right-of-way for a future road and non-motorized connection to upper Dickey Road based on impacts from future development.

Ordinance 587-2020 requires that a Development Agreement addressing these conditions be approved by the parties by June 30, 2022, for the site-specific Comprehensive Plan amendments to take effect. *Exhibit 1, Staff Report, page 2; Exhibit 2; Exhibit 3.*

Proposed Development Agreement

6. Revised Code of Washington (RCW) 36.70B.170 authorizes local governments to enter into development agreements with a person having ownership or control of real property within its jurisdiction. Such development agreements must set forth the development standards and other provisions that shall apply to, and govern and vest, the development, use, and mitigation of the development of the real property for the duration specified in the agreement. *RCW 36.70B.170(1)*. The request is for a Development Agreement (DA) that would vest development within the site to the development standards of Titles 11, 13, and 16 through 20 KCC for a period of 15 years, with an allowance for an extension of the 15-year DA term through a DA amendment following a public hearing, as required under Kitsap County Code (KCC) 21.04.220.G. Project level details, including site plans, the number of lots and units, the location of the road network, and project phasing, would be required with the preliminary plat or other land use applications submitted following approval of the DA and changes in the land use designations and zoning classifications for the property. *Exhibit 1, Staff Report, pages 2 through 6; Exhibit 10.*

7. RCW 36.70B.170(3) provides a non-exhaustive list of “development standards” that may be included within a DA. These development standards from RCW 36.70B.170(3), as relevant to the proposed DA, are listed below (in quotes), together with County staff’s analysis of how the proposed DA addresses the standards (in italics):
 - “Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes.” *Permitted uses, residential densities, nonresidential densities, and intensities and building sizes would all be addressed at the project level permit application stage. The DA would vest these standards to those in effect in Title 17 KCC at the time the DA is adopted.*
 - “Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW.” *Section 2.6 of the proposed DA outlines procedures required under SEPA, including cumulative impact considerations. Section 2.7 also addresses mitigation measures by providing for compatibility of future projects on the subject site with adjacent, industrially zoned properties, including the use of screening buffers, notice to title for properties on the subject site regarding Apex Airport operations, and additional measures deemed necessary as part of future project-level review.*
 - “Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features.” *Design standards such as structure heights, setbacks, and landscaping would be addressed at the project-level permit application stage. The proposed DA would vest these standards to those in effect in Title 17 KCC at the time the DA is executed.*
 - “Affordable housing.” *Section 2.2 of the proposed DA outlines the requirements for the subject property and future projects to have a minimum of 10 percent of all dwelling units be designated affordable, how affordable housing is defined for the purposes of the DA, how affordable housing may be either for rent or for sale and how those methods are measured and monitored, how long the affordability*

shall last, when the affordable housing units must be constructed, and how the County would be compensated if the affordable housing requirements are not met.

- *“Parks and open space preservation.” Section 2.9 of the proposed DA would require that the developer for the subject property include a minimum 10-foot-wide shared-use path that runs north-south through the property, with the final location of the path to be determined at preliminary plat submittal. Future development of the subject property would also be required to meet recreation and open space requirements in KCC 16.24.040(H).*
- *“Review procedures and standards for implementing decisions.” The review procedures for project and building permit applications would be those in effect at the time the applications are deemed complete. Review procedures for specific provisions in the DA such as affordable housing are as addressed in the DA, including methods and timing.*
- *“A build-out or vesting period for applicable standards.” The vesting period requested is 15 years, with the option to extend through a mutually agreed and appropriately noticed DA amendment.*
- *“Any other appropriate development requirement or procedure.” The proposed DA also addresses transfer of development rights and parties that must receive notice of proposed projects.*

Exhibit 1, Staff Report, pages 6 through 8; Exhibit 10.

8. RCW 36.70B.170(4) requires that development agreements “reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.” Section 6 of the proposed DA addresses this requirement, stating, “Kitsap County reserves the authority under RCW 36.70B.170(4) and KCC 21.04.220(D)(4) to impose new or different regulations to the extent required by the federal or state governments or by a serious threat to public health and safety.” *Exhibit 1, Staff Report, page 10; Exhibit 10.*
9. As discussed above, the proposed DA must address all conditions required under Ordinance 587-2020 for the site-specific land use designation and zoning classification amendments to take effect. County staff reviewed the proposed DA and determined that Section 2 of the DA would address these conditions, noting:
 - Section 2.1 identifies all parties that must be notified by the Owners prior to submitting any application for the subject property.
 - Section 2.2 establishes the requirements for transferring development rights at 40 development rights certificates, and affordable housing as a minimum of 10 percent of housing units in each phase or combination of preceding phases, along with affordability standards, “for rent” and “for sale” methods to achieve affordability, monitoring of affordability requirements, and compensatory funds to be paid to the County should affordability requirements not be met.

- Section 2.3 establishes that the ordinance condition requiring that the subject property be annexed into the Central Kitsap Fire and Rescue District was met via Resolution 032-2020.
- Section 2.4 states that all Land Use Map and Zoning Map changes that were conditionally approved in Ordinance 587-2020 would become effective upon approval of the DA, except that Section 2.5 requires that the gravel mine reclamation must be complete or have a reclamation plan that includes reclamation as part of a site development activity permit before the Mineral Resource Overlay is removed.
- Section 2.6 states that SEPA must be followed, including cumulative review of impacts.
- Section 2.7 outlines standards for compatibility of the development, including buffers of at least 50 feet with the adjacent industrially zoned property and appropriateness of uses and densities near Apex Airport.
- Section 2.8 clarifies that the “spine road” identified in Ordinance 587-2020 would not be a public roadway, but that internal circulation must meet all Kitsap County Code requirements.
- Section 2.9 requires that a 10-foot-wide shared-use path be completed on the subject property as identified in the Kitsap County Non-Motorized Facility Plan.
- Section 2.10 clarifies that a north/south Dickey Road connection would not be a public roadway, but that property fronting on Dickey Road would be required to have frontage improvements and that internal access and circulation must meet all Kitsap County Code requirements.

Exhibit 1, Staff Report, page 3; Exhibit 3; Exhibit 4; Exhibit 10.

State Environmental Policy Act

10. The County acted as lead agency and analyzed the environmental impacts of the proposed DA, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The County reviewed the Applicant’s environmental checklist and other information on file and determined that the proposed non-project Development Agreement would not have a probable significant adverse impact on the environment. Accordingly, the County issued a Programmatic Determination of Nonsignificance (DNS) for the proposal on October 19, 2021, with a comment deadline of November 2, 2021. As discussed above, the County received one comment on the DNS from WSDOT Aviation Division, which noted that it has been in consultation with the Apex Airport ownership and the Applicant and has provided recommendations for open spaces near the airport, requested to review any future development plans for potential airspace hazards, and requested that title notice include information regarding airport operations. The environmental impacts of any specific development proposal on the property would be reviewed in accord with SEPA requirements, including the requirement to consider cumulative impacts for the entire property, as specified in Section 2.6 of the proposed DA. *Exhibit 1, Staff Report, pages 4, 5, 11, and 12; Exhibit 6; Exhibit 10; Exhibit 11; Exhibit 12.*

Comprehensive Plan and Zoning

11. As discussed above, the approximately 138-acre property is currently designated Urban Industrial and Mineral Resource Overlay/Urban Industrial under the Comprehensive Plan and would be redesignated as Urban Low Intensity Commercial and Urban Low-Density Residential pursuant to Ordinance 587-2020 following final approval of the proposed DA by the Board of County Commissioners. County staff identified the following Comprehensive Plan goals and policies as relevant to the proposed DA:

- Focus current and future planning on infill and redevelopment of existing Urban Growth Areas. [Land Use Goal 1]
- Review spatial requirements and proximity as considerations when requiring new development to provide connectivity to existing trails, paths and sidewalks and seek locations and means to expand existing trail system. [Land Use Policy 12]
- Land use decisions near or within the operating envelope of an airport must not compromise air safety. [Land Use Policy 48]
- Increase affordable housing units and ensure that a broad range of housing types are available. [Housing and Human Services Goal 2]
- Support development of a regional trail system throughout the County and recognize that trails, when built, must be sensitive to impact on natural environment. [Parks Policy 11]

Exhibit 1, Staff Report, pages 9 and 10; Exhibit 3; Exhibit 10.

12. The property is currently zoned Industrial and Industrial with Mineral Resource Overlay and would be rezoned as Neighborhood Commercial (NC) and Urban Low Residential (UL) pursuant to Ordinance 587-2020 following final approval of the proposed DA by the Board of County Commissioners.² The NC zone is intended to “provide for the quick stop shopping needs of the immediate neighborhood in which they are located. These centers should be based upon demonstrated need and shall be sized in a manner compatible with a residential setting.” *KCC 17.270.010*. The UL zone is intended “to recognize, maintain, and encourage urban low density residential areas by including a full range of urban services and facilities that are adequate at the time of development. This zone is also intended to create cost-efficient residential areas which are capable of allowing the provision of community services in a more economical manner.” *KCC 17.200.010*. Section 4 of the proposed DA provides that, during the term of the DA, all future development projects on the site would be reviewed under the applicable zoning code regulations in effect at the time the DA receives final approval. As noted above, there are no current development plans for the site, and the Applicant has not requested

² Section 2.5 of the proposed DA requires that the gravel mine reclamation must be complete or have a reclamation plan that includes reclamation as part of a site development activity permit before the Mineral Resource Overlay is removed.

any variations from the applicable zoning code standards that would govern future development of the site. *Exhibit 1, Staff Report, page 10; Exhibit 3; Exhibit 10; Exhibit 14.*

Testimony

13. County Department of Community Development Interim Program Manager Liz Williams testified generally about the proposed Development Agreement and how it would meet the requirements under RCW 36.70B.170, as well as the specific criteria for approval under KCC 21.04.220. She noted that the proposal is for a programmatic Development Agreement intended to satisfy the conditions of approval under Ordinance 587-2020 for a site-specific Comprehensive Plan amendment. Ms. Williams provided background information on the site-specific amendment and detailed the conditions required by Ordinance 587-2020, consistent with the findings above. Regarding the ordinance's condition requiring that the DA specify that a portion of future dwelling units developed on the site would require the acquisition and transfer of development rights (TDRs), she explained that the Applicant would be required to purchase TDRs from rural landowners to account for the increased urban infill development on the property resulting from a change of the property's zoning classification. Ms. Williams noted that the TDR requirement is intended to protect the existing character of rural areas within the county. *Testimony of Ms. Williams.*

14. County Senior Planner Melissa Shumake provided details about the proposed DA, noting that: Section 1 sets forth the general scope of the agreement; Section 2 addresses the conditions of approval required by Ordinance 587-2020, including conditions related to notice of future project proposals, affordable housing, utilization of TDRs, annexation of the property into the Central Kitsap Fire and Rescue District, SEPA review procedures for future development projects, standards ensuring compatibility with surrounding industrial development, and motorized and non-motorized transportation connections through the site; Section 3 establishes the 15-year term for the DA and the process for amending this term; Section 4 outlines the provisions of the Kitsap County Code to which future project application would vest; Section 5 identifies how the DA may be assigned or transferred to other parties upon sale or annexation; Section 6 reserves the County's right to impose new or different regulations to future development projects on the site to address a change of federal or state requirements or a threat to the public health and safety; Section 7 provides that the Applicant property owners must comply with all applicable laws; Section 8 establishes a dispute resolution process; and Section 9 outlines general provisions related to third-party rights, severability of terms, survival of terms beyond the 15-year duration of the DA, representation of parties by legal counsel, the parties' legal authority to enter into the DA, and recordation of the DA. Ms. Shumake discussed how the proposed DA would comply with all state law requirements governing development agreements and it would be consistent with several goals and policies of the County Comprehensive Plan. She noted that all comments on the proposal related to concerns about future development of the site being compatible with the nearby Apex

Airport. Ms. Shumake explained that the proposed DA would address these concerns by requiring the Applicant to consult with WSDOT and Apex Airport regarding specific development proposals and by requiring that a notice of title be applied to all new lots to inform potential purchasers about airport operations. She stated that County staff reviewed the proposal and determined that it would satisfy all criteria for approval under KCC 21.04.220.D. *Testimony of Ms. Shumake.*

15. Applicant Representative Levi Holmes testified that the Applicant is excited to restore and redevelop the former gravel mine, which has been dormant for approximately 25 years. He stated that future development of the site under the DA would provide affordable housing opportunities that would not otherwise be required under current code provisions. Mr. Holmes noted that the proposed DA's affordable housing requirements would provide flexibility necessary to respond to changing demands and conditions. He stated that the Applicant has had several discussions with Apex Airport and WSDOT to address their concerns about future development being compatible with airport operations and would continue to collaborate with the airport and WSDOT during future development permit processes. Mr. Holmes explained that the DA would require a 10-foot-wide multi-use trail to be constructed through the site, which would be dedicated to the public and become part of the County's trail system. *Testimony of Mr. Holmes.*
16. Bill Roark testified that he serves as President of the APOIA, which owns and operates the Apex Airport. He stated that the airport has met with the Applicant Representative and that he appreciates the Applicant's efforts to work with the airport to address concerns about future development of the site being compatible with airport operations. *Testimony of Mr. Roark.*

Staff Recommendation

17. Having determined that the proposed DA would satisfy state law requirements governing development agreements under RCW 36.70B.170 and the specific criteria for approval of a DA under KCC 21.04.220.D, County staff recommends that the Hearing Examiner forward a recommendation to the Kitsap County Board of County Commissioners to approve the DA. *Exhibit 1, Staff Report, page 13.*

CONCLUSIONS

Jurisdiction

The Kitsap County Hearing Examiner is authorized to recommend approval, approval with conditions, or disapproval of a proposed development agreement when the Kitsap County Board of County Commissioners delegates the public hearing process, under KCC 21.04.220.C. KCC 2.10.070. On August 16, 2021, the Kitsap County Board of County Commissioners delegated the public hearing process to the Hearing Examiner through Resolution No. 147-2021. *Exhibit 9.*

Criteria for Review

RCW 36.70B.170 authorizes local governments to enter into development agreements with a person having ownership or control of real property within its jurisdiction. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. *RCW 36.70B.170(1)*.

In recommending approval of a development agreement, the Hearing Examiner shall first make a finding that all of the following conditions exist:

1. The proposed agreement is consistent with the goals and policies of the Comprehensive Plan;
2. The proposed agreement is consistent with the local development regulations; provided, that standards may be modified only if the board makes further findings that:
 - a. Variation of the standard provides a public benefit; and
 - b. The proposal subject to the modified standard remains consistent with the Comprehensive Plan; and
 - c. All adverse impacts are mitigated;
3. The proposed agreement provides for adequate mitigation of adverse environmental impacts; provided, that if the development is not defined at the project level, the agreement shall provide a process for evaluating and appropriately mitigating such impacts at the time of project development; and
4. The proposed agreement reserves the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

KCC 21.04.220.D.

The criteria for review adopted by the Kitsap County Board of Commissioners are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

1. **The proposed Development Agreement is consistent with the goals and policies of the Comprehensive Plan.** The approximately 138-acre property comprising the former gravel mine site is currently designated Urban Industrial and Mineral Resource Overlay/Urban Industrial under the County Comprehensive Plan. Following final approval of the proposed Development Agreement, the property would be redesignated as Urban Low Intensity Commercial and Urban Low-Density Residential pursuant to Ordinance 587-2020, which would allow the site to be redeveloped with a mix of

*Findings, Conclusions, and Recommendation
Kitsap County Hearing Examiner
Dickey Pit Development Agreement, No. 21-01506*

residential and small-scale commercial uses. County staff reviewed the proposed DA and determined that it would be consistent with several Comprehensive Plan goals and policies: promoting infill development and redevelopment within existing Urban Growth Areas (UGAs); requiring new development to provide connectivity to existing trails, paths, and sidewalks; supporting development of a regional trail system; requiring that development near airports not compromise air safety; and promoting affordable housing opportunities. The proposed DA would further these goals and policies by encouraging redevelopment of a former mining site within the Silverdale UGA with a mix of residential and small-scale commercial uses, requiring a non-motorized shared-use path to be constructed through the site, in support of the regional trail system, and requiring the provision of affordable housing units within the site, while protecting airport operations through consultation with the Apex Airport and WSDOT for future development projects and through notice to title for all lots regarding airport operations. *Findings 1 – 17.*

2. **The proposed Development Agreement is generally consistent with local development regulations.** County staff determined that the proposed Development Agreement is generally consistent with local development regulations. The Hearing Examiner concurs with County staff's assessment. The proposed DA does not include any specific development proposals, would vest future development on the site to the development standards in effect at the time the DA receives final approval, and would not provide for any deviation from those standards. The County provided reasonable notice and opportunity to comment on the proposal. The County received comments on the proposed DA from members of the public and reviewing government agencies, all of which raised concerns about whether future development on the site would be compatible with the adjacent Apex Airport. The proposed DA addresses these concerns by including provisions requiring the Applicant to consult with WSDOT and Apex Airport regarding specific development proposals and by requiring that a notice of title be applied to all new lots to inform potential purchasers about airport operations. The proposed DA also addresses all conditions required under Ordinance 587-2020 for the site-specific Comprehensive Plan land use designation and zoning classification amendments to take effect, as well as all state law requirements under RCW 36.70B.170. *Findings 1 – 17.*

3. **The proposed Development Agreement provides for adequate mitigation of adverse environmental impacts.** The County reviewed the environmental impacts of the proposed DA, determined that the non-project action would not have a probable significant adverse impact on the environment, and issued a Programmatic Determination of Nonsignificance. Section 2.6 of the proposed DA provides that specific development proposals that are not SEPA exempt would be reviewed in accord with SEPA requirements, including requirements to consider cumulative impacts for the entire property. *Findings 5 – 10, 13 – 17.*

4. **The proposed Development Agreement reserves County authority to impose new or different regulations to the extent required by a serious threat to public health and safety.** Section 6 of the proposed Development Agreement explicitly includes a reservation of authority retaining the County's right, under RCW 36.70B.170(4), to impose new or different regulations to the extent required by such threats. *Findings 8 and 14.*

RECOMMENDATION

Based upon the preceding findings and conclusions, the Hearing Examiner recommends that the proposed Development Agreement between Kitsap County and Port Orchard Sand & Gravel Company, Inc., and Stoneridge Washington, LLC, concerning the potential future development of a former gravel mine site with a mix of residential and small-scale commercial uses, at 9575 Dickey Road NW, be **APPROVED** by the Kitsap County Board of Commissioners

Recommended this 13th day of December 2021.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center