



Kitsap County Department of Community Development

Hearing Examiner Staff Report and Recommendation

Report Date: November 10, 2021
Hearing Date: November 18, 2021

Application Submittal Date: March 12, 2021
Application Complete Date: May 20, 2021

Proposal Name: Dickey Pit Development Agreement
Type of Application: Permit Type-IV Development Agreement
Permit Number: 21-01506

Proposal Location

9575 Dickey Road NW
Silverdale, WA 98383
Commissioner District #3

Assessor's Account #

182501-3-031-2003
182501-4-026-2008
192501-1-023-2006
192501-2-008-2003
192501-2-009-2002

Applicant/Owner of Record

Port Orchard Sand and Gravel Company, Inc
Stoneridge Washington, LLC

VICINITY MAP



Recommendation Summary

Approval as stated in Section 10 of this report.

1. Background

The current proposal is for a non-project Development Agreement (DA) between Kitsap County (County), and Port Orchard Sand and Gravel Company, Inc and Stoneridge Washington, LLC (Owners) as required as a condition of approval in Ordinance 587-2020 for File # 18-00495.

Kitsap County Code (KCC) 21.04.220 and RCW 36.70B.170 – 36.70B.210 authorize local governments to enter into development agreements with property owners for land use regulatory purposes. The Owners seek to redevelop the former gravel mine site into a neighborhood with a mix of residential and small-scale commercial uses.

The Development Agreement application was submitted on March 12, 2021, and a Notice of

Incomplete application was issued on April 6, 2021, which required that the applicant also submit the required SEPA checklist and meet an ordinance condition of approval that was not addressed in the initial submittal. A Notice of Complete Application was issued on May 20, 2021, with the Notice of Application issued and published in the newspaper of record on June 2, 2021.

Negotiation of the terms of the DA between the applicant and County proceeded until mid-October 2021. The SEPA Determination of Non-Significance for the Development Agreement was issued on October 19, 2021, with a comment period ending November 2, 2021. The Notice of Public Hearing for November 18, 2021 was issued on November 3, 2021.

Prior to filling and deeming a complete application for a DA noted above, the Owners submitted a site-specific comprehensive plan amendment (File #18-00495) on February 2, 2018 as part of the 2018 Comprehensive Plan Amendment docket. On April 25, 2018, the applicant requested to remove the application from the 2018 Comprehensive Plan Amendment docket in order to resolve questions about SEPA and scope of the proposal. The application was carried through to the 2019 docket, and additional information was submitted on February 8, 2019. Staff requested further clarifications on February 13, 2019, which was received on March 14, 2019.

A SEPA Determination of Non-Significance was issued for the site-specific comprehensive plan amendment on November 16, 2019. The Kitsap County Planning Commission voted to recommend approval of the Comprehensive Plan Amendment application with conditions on February 4, 2020 and adopted findings of fact supporting their recommendation on February 18, 2020.

On April 27, 2020, the Kitsap County Board of County Commissioners made findings of fact that conditionally approved the site-specific amendment through Ordinance 587-2020. This Ordinance included approximately a dozen conditions of approval that were to be addressed in a Development Agreement, which must be approved by the parties by June 30, 2022 for the site-specific amendment to take effect.

2. Proposal Request

The subject application is a non-project/programmatic development agreement intended to fulfill requirements of Ordinance 587-2020 and complete the conditional approval of the site-specific amendment.

The request is for approval of a DA that vests certain development standards for the site for a period of 15 years, with the allowance for an extension of the DA term via amendment after a public hearing per KCC 21.04.220(G). Project level details, including site plan, number of lots/units, location of road network, phasing, etc., will be required once the Owners submit a Preliminary Plat or land use application after the DA is approved and land use and zoning have been changed.

The DA is authorized by RCW 36.70B.170 through 36.70B.210, and Kitsap County Code 21.04.220. The DA is an agreement that guides the future review of the site and ensures that a future project application will be reviewed consistently during the life of the project. In

summation, the sections of the DA are as follows:

In Section 1, the DA sets forth the general scope of the agreement as satisfying the site-specific amendment conditions of approval found in approving Ordinance 587-2020.

Section 2 addresses all of the terms required in the DA as conditions of approval from Ordinance 587-2020.

- 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% 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 (see Approved Zoning Map exhibit) will go into effect 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 will be 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 Industrial zoned property and appropriateness of uses and densities near Apex Airport.
- Section 2.8 clarifies that the “spine road” identified in Ordinance 587-2020 will 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 will not be a public roadway, but that property fronting on Dickey Road will be required to have frontage improvements and that internal access and circulation must meet all Kitsap County Code requirements.

Section 3 establishes the term of the DA to be a maximum of 15 years. The agreement states that the term may be extended via an amendment if approved by the Board of County Commissioners and the property owner consistent with Kitsap County Code procedures in 21.04.220(G).

Section 4 outlines the Kitsap County Code Titles the subject property and subsequent project

applications will vest to:

Title 11	Roads, Highways and Bridges
Title 13	Water and Sewers
Title 16	Land Division and Development
Title 17	Zoning
Title 18	Environment
Title 19	Critical Areas Ordinance
Title 20	Transportation

Section 5 identifies how the DA may be assigned or transferred to other parties, upon sale by owners or upon annexation by a city, and that all rights and obligations transfer with the Agreement.

Section 6 reserves to Kitsap County, as required by statute, the ability to impose new/different regulations should federal or state requirements change or a serious threat to the public's health and safety be identified.

Section 7 reiterates that the Owners must comply with all applicable laws.

Section 8 establishes a dispute resolution process and requires that the parties meet within 10 days after a disagreement arises, and that arbitration or mediation must be attempted before any judicial review. Attorney's fees shall be paid by each party.

Section 9 outlines general provisions, including no third-party rights, severability of terms of the agreement, survival of terms of the agreement past the 15 year agreement duration, agreement that each party had representation of legal counsel, agreement that the parties have the legal authority to enter into the agreement, notice that amendments to the agreement must be made after a public hearing and then signed by parties, how notice to either party shall be given, clarifies that the agreement does not constitute a joint venture by the parties, no personal liability with regard to the terms of the agreement, and that the agreement must be recorded once signed.

3. SEPA (State Environmental Policy Act)

The State Environmental Policy Act (SEPA), found in Chapter 43.21C RCW (Revised Code of Washington), is a state law that requires the County to conduct a review of any action that might have a probable, significant, adverse impact on the environment. The review includes the completion of an Environmental Checklist by the applicant and a review of that checklist and related information by the County. The decision following environmental review, which may result in a Determination of Nonsignificance (DNS), a Mitigated DNS, or a Determination of Significance (DS) that results in an Environmental Impact Statement, is called a threshold determination. A separate notice of the threshold determination is given by the County.

Pursuant to WAC 197-11-310, a threshold determination was made by the responsible official for Kitsap County for this proposal. A programmatic Determination of Nonsignificance was issued on October 19, 2021 after concluding that the Development Agreement does not have a probable significant adverse impact on the environment. A 14-day comment period followed that ended on November 2, 2021. One comment was received from WSDOT.

4. Physical Characteristics

The subject site is generally located in the western portion of the Silverdale Unincorporated Urban Growth Area and is between Dickey Road, Willamette-Meridian Road, Anderson Hill Road, and Newberry Hill Road.

The site has previously been used as a gravel mine and has therefore been excavated extensively in some portions and has associated sediment ponds. Other portions of the site are heavily wooded. According to Kitsap County critical areas maps, much of the site has seismic and erosion hazards. There are two mapped streams on the site as well. The site is generally hilly, though some of the elevation change is due to previous mining efforts. See Critical Area Map Exhibit 15.

To the east of the site is a housing development, to the northeast is wooded land zoned Industrial and Rural Residential, to the northwest is wooded land zoned Industrial and Rural Residential along with the Apex Airport. To the east is property zoned Industrial that has been developed with industrial uses. To the south is property zoned Industrial with the Mineral Resource Overlay that has an active mine.

5. Policies and Regulations Applicable to the Subject Proposal

The Growth Management Act of the State of Washington, RCW 36.70A, requires that the County adopt a Comprehensive Plan and then implement that plan by adopting development regulations. These development regulations must be consistent with the Comprehensive Plan. The process to update Comprehensive Plans and development regulations must include enhanced public involvement, so that those who are impacted have opportunities to help shape them.

The Kitsap County Comprehensive Plan was last comprehensively amended on June 30, 2016 with annual updates through April 2020. Kitsap County Code (KCC) Chapter 21.04.220 regarding development agreements was last amended in 2012.

State law regarding development agreements also applies and is found in the Local Project Review Act at RCW 36.70B.170 - .210.

The County's development regulations are contained within the Kitsap County Code. The following development regulations are most relevant to the processing of this application (codes relevant to future development of the subject site and which the proposal vests to are listed above in Section 2 of this staff report):

Code Reference	Subject
Chapter 17.120	Establishment of Zones and Maps
Chapter 18.04	State Environmental Policy Act (SEPA)
Chapter 21.04	Land Use and Development Procedures
Chapter 21.08	Legislative Action Procedures

Hearing Examiner Review

Pursuant to KCC 21.04.220, the Kitsap County Board of County Commissioners found in Resolution 147-2021 that it was in the interest of the public and efficiency of the land use process for the Kitsap County Hearing Examiner to hold a public hearing on the proposed DA and that the Hearing Examiner make a recommendation to the Board of County Commissioners based upon their review of the proposal, the staff recommendation, and public testimony regarding the proposal. The Hearing Examiner has authority to recommend approval, denial, or approval with conditions to the Board of County Commissioners. The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper recommendation. The powers of the Hearing Examiner are enumerated in KCC Chapter 2.10 Hearing Examiner.

RCW 36.70B.170 Development agreements — Authorized.

(1) A local government may enter into a Development Agreement with a person having ownership or control of real property within its jurisdiction. A DA 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. A DA shall be consistent with applicable development regulations adopted by a local government planning under Chapter 36.70A RCW.

Staff Comment: The DA establishes that the subject property vests to Titles 11, 13, 16, 17, 18, 19, and 20 of Kitsap County Code for a period of 15 years, to be extended if mutually agreed to and signed after a public hearing to amend the DA.

(3)(a) Development standards can include “Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes”

Staff Comment: Permitted uses, residential densities, nonresidential densities, and intensities and building sizes will all be addressed at the project level permit application stage. The DA vests these standards to those in effect in Title 17 at the time the DA is adopted.

(3)(c) Development standards can include “Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW (SEPA)”

Staff Comment: Mitigation measures are addressed in DA section 2.6 which outlines SEPA procedures including cumulative impacts considerations; DA section 2.7 also addresses mitigation measures by providing for compatibility of future projects on the subject site with the

adjacent properties zoned Industrial, including the use of buffers for screening, 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.

(3)(d) Development standards can include “Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features”

Staff Comment: Design standards such as heights, setbacks, landscaping etc. will be addressed at the project level permit application stage. The DA vests these standards to those in effect in Title 17 at the time the DA is executed.

(3)(e) Development standards can include “Affordable housing”

Staff Comment: Section 2.2 of the DA outlines the requirements for the subject property and future projects to have a minimum of 10% 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 shall be compensated should affordable housing requirements not be met.

(3)(f) Development standards can include “Parks and open space preservation”

Staff Comment: Section 2.9 of the DA requires that the developer for the subject property include a minimum 10-foot width shared use path that runs north-south through the property, with final location to be determined at preliminary plat submittal. Future development of the subject property will also be required to meet recreation and open space requirements in KCC 16.24.040(H).

(3)(g) Development standards can include “Phasing”

Staff Comment: The DA does not establish a phasing timeline but does acknowledge in various sections how specific requirements will be handled under a phased application/development plan. The MRO designation removal may be phased, as may be the provision of affordable housing.

(3)(h) Development standards can include “Review procedures and standards for implementing decisions”

Staff Comment: Review procedures for project applications shall be as outlined in Title 21, Land Use and Development Procedures, at the time of application because projects may not vest to procedure. Building permit applications will be processed as outlined by Title 14 Buildings and Construction at the time of application in accordance with RCW 19.27.095. Review procedures for specific provisions in the DA such as affordable housing are as addressed in the DA, including

methods and timing.

(3)(i) Development standards can include “A build-out or vesting period for applicable standards”

Staff Comment: *The vesting period requested is 15 years, with the option to extend via a mutually agreed and appropriately noticed DA amendment.*

(3)(j) Development standards can include “Any other appropriate development requirement or procedure.”

Staff Comment: *The DA also addresses transfer of development rights and parties who must receive project notifications.*

(4) The execution of a Development Agreement is a proper exercise of county and city police power and contract authority. A Development Agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A Development Agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

Staff Comment: *Based on this subsection, Kitsap County has authorized execution of a DA pursuant to KCC Title 21 Land Use and Development Procedures. The DA acknowledges this authority and includes language in Section 6 reserving authority to apply new or different regulations when required to protect against serious threat to public health and safety. It does not obligate any party to fund or provide services outside that which is required by any permit approval.*

KCC Title 21.04.220 Development agreements.

A. Purpose and Authority. As authorized by, and in accordance with, Chapter 36.70B RCW, Kitsap County has sole discretion to enter into development agreements where it is shown to be in the public interest. Development agreements are an optional, Type IV legislative process subject to the procedures set forth in this chapter.

B. Content of Agreement. A Development Agreement must, at a minimum, set forth the following elements:

1. The names of the parties.
2. A precise legal description of the property covered by the development agreement.
3. The development standards that shall apply.
4. The term of the development agreement, which shall be the duration in which all development proposed under the agreement shall be completed. Unless amended, all approvals and permits shall expire upon the date of termination.
5. A statement consistent with RCW 36.70B.190 that during the term of the development

agreement, it is binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement.

6. That it is compliant with RCW 36.70B.170 through 36.70B.210 and the KCC.

Staff Comment: The DA has met these criteria 1 through 6 as shown in Attachment A (Development Agreement).

C. Public Hearing. The board of county commissioners may approve a Development Agreement by resolution or ordinance after a public hearing, which may be delegated to the planning commission or hearing examiner as appropriate.

Staff Comment: The Board of Commissioners delegated the public hearing to the Hearings Examiner via Resolution 147-2021.

D. Decision Criteria. The board of commissioners may adopt a Development Agreement by resolution, with findings that:

1. The proposed agreement is consistent with the goals and policies of the Comprehensive Plan;

Staff Comment: There is no goal or policy prohibiting the County from entering an agreement to extend to a developer the right to vest to certain development regulations and no goal or policy that runs counter to the process for SEPA review set forth in the DA.

Additionally, the DA is consistent with the following goals and policies of the Comprehensive Plan:

Land Use Goal 1. Focus current and future planning on infill and redevelopment of existing Urban Growth Areas. The DA's subject site is in an UGA and is redevelopment, as the site has previously been used as a surface mine.

Land Use Policy 12. 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. The DA specifically requires a new shared use path through the subject site and that the path allow for connections/extensions to the north and south of the property.

Land Use Policy 48. Land use decisions near or within the operating envelope of an airport must not compromise air safety. The DA specifically requires notice to title for all lots regarding the continued operation of Apex Airport and requires consultation with Apex Airport operators and WSDOT's Aviation division at the project application stage regarding appropriate uses.

Housing and Human Services Goal 2. Increase affordable housing units and ensure that a broad range of housing types are available. The DA requires a minimum of 10% of units in the future development be affordable.

Parks Policy 11. Support development of a regional trail system throughout the County and recognize that trails, when built, must be sensitive to impact on natural environment. The

DA requires a multi-use trail to be built on the subject site and allows for consideration of the impacts to the natural development by not identifying exact location until the preliminary plat application stage.

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;

Staff Comment: All the decision criteria have been satisfied. No variations to standards are proposed. As to adverse impacts, SEPA Staff determined that the DA would not have any significant adverse environmental impacts.

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

Staff Comment: A DNS was issued for this DA on November 19, 2021 as no significant adverse environmental impacts were identified. The DA also requires that project level submissions shall capture cumulative impacts, even if a phased application approach is used by the developer.

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.

Staff Comment: Section 6 reserves this authority.

E. Concurrent Rezone. If the proposal requires a zoning map change, the zoning change shall be adopted by ordinance concurrently with the resolution approving the development agreement.

Staff Comment: The DA is a required condition of a comprehensive map amendment and concurrent rezone.

F. Recording/Binding Effect. An approved development agreement must be recorded with the county auditor. During the term of the development agreement, the agreement is binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the property covered by the development agreement.

Staff Comment: The approved DA will be recorded with the Kitsap County Auditor; this is stated in section 9.15 of the DA.

G. Amendments. Any amendments to an approved development agreement must be approved by the board of commissioners and property owner following a public hearing on the amendment.

Staff Comment: Amendments are discussed in section 9.8 of the DA and comply with this requirement.

H. Appeals. There are no administrative appeals of development agreements. Appeals of development agreements shall be as required by law.

Staff Comment: A DA is type IV decision. Appeals will be as otherwise required by law.

6. Documents Consulted in the Analysis

A complete index of exhibits is located in the proposal file. To date, the index to the record consists of Exhibits 2-15 (Exhibit 1 is this staff report).

Exhibit #	Document	Dated	Date Received
2	2019 Comprehensive Plan Amendment (18-00495) Staff Report	01/10/2020	
3	Kitsap County Ordinance 587-2020	04/7/2020	
4	Kitsap County Resolution 032-2020	02/24/2021	
5	Dickey Pit Development Agreement		03/21/2021
6	SEPA Checklist		04/08/2021
7	Notice of Application (NOA)	06/03/2021	
8	Public Comments – NOA		June 2021
9	Kitsap County Resolution 147-2021	08/16/2021	
10	Revised Dickey Pit Development Agreement		10/18/2021
11	SEPA Programmatic Determination of Non-Significance	10/19/2021	
12	Public Comment – SEPA		11/01/2021
13	Notice of Public Hearing	11/03/2021	
14	Approved Zoning Map	11/05/2021	
15	Critical Area Map	11/05/2021	

7. Public Outreach and Comments

In compliance with KCC Title 21, Land Use and Development Procedures, the Department gave public Notice of Application to property owners within 800 feet of the subject property for the Development Agreement, gave email notice to agencies with jurisdiction, gave Notice of the issuance of the SEPA Determination of Non-Significance, and published in the Kitsap Sun and posted on the subject site the Notice of Public Hearing at least 15 days before the hearing. The Department has received four comments to date, listed below.

Date	Submitted By	Comment Summary	Department Response
6/14/2021	Bill Roark, Apex Airport	Apex Airport is a public use airport, in operation since 1946 and considered an essential public facility. State law requires the discouragement of siting of incompatible uses within 5000 feet of the airport. Request that Apex Airport and WSDOT input be considered in site planning.	Development Agreement Section 2.7.3 requires that the owners consult with Apex Airport and WSDOT regarding compatibility of development. Section 2.7.4 requires that a Notice to Title be applied to all new lots that informs of the presence of Apex Airport and continued operations there.
6/15/2021	Max Platts, WSDOT	Concerned with safety and compatibility of development in Compatibility Zone 3, where residential development is recommended to be prohibited. Airport operations may be perceived as nuisance to future residents. GMA requires counties to discourage incompatible uses adjacent to airports.	See response above.
6/16/2021	John and Maggie Stasny	Want to know if the project is following state requirements in GMA for general aviation airports, point out that Apex Airport is an essential public facility as outlined in GMA, and the importance of Apex Airport in the context of future upgrades to Bremerton's Airport, leaving Apex as only public use airport. How will the project be mitigated?	See response above.
11/1/2021	Max Platts, WSDOT	WSDOT staff has been in consultation with airport ownership as well as developer and made recommendations regarding open space on portions of the subject site to comply with compatibility zone requirements. Will want to review plans in the future for any possible airspace hazards at the project level stage. Request title notice regarding airport operations.	See response above.

8. Review Authority

The Hearing Examiner has recommendation authority under KCC 21.04.220(C) and Resolution 147-2021. The Board of County Commissioners has final approval authority under the same section.

9. Department Findings

1. The Development Agreement is consistent with the goals and policies of the Comprehensive Plan.

2. The Development Agreement is consistent with all applicable regulations.

3. The Development Agreement does not result in probable significant adverse environmental impacts, so no mitigation is needed.

The Development Agreement includes the appropriate language to reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

10. Recommendation

Based upon the analysis above and the decision criteria found in KCC 21.04.220 and RCW 36.70B.170, the Department of Community Development recommends that the Hearing Examiner recommend to the Board of County Commissioners **approval** of the Dickey Pit Development Agreement as presented.

Report prepared by:



11/10/2021

Melissa Shumake, Senior Planner, PEP

Date

Report approved by:



11/10/2021

Liz Williams, Planning Manager, PEP

Date