



**KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT**

614 DIVISION STREET MS-36, PORT ORCHARD WA 98366-4682  
(360) 337-7181 FAX (360) 337-4925 [www.kitsapgov.com/dcd/](http://www.kitsapgov.com/dcd/)

**APPEAL OF HEARING EXAMINER DECISION**

Fee: See attached/linked Fee Schedule

Project Name: WELAND TREE FARM

Project Applicant: CRAIG WELAND

Application: WELAND TREE FARM

Case Number: 091008-021

Project Tax Parcel #: 242401, 14-008-1005-  
ETC, JWS

Please include the name and signature of each appellant, as well as all appeal information required in KCC 21.04.120.

<b>RECEIVED</b> FOR OFFICIAL USE ONLY
APR 05 2010
KITSAP COUNTY DEPT. OF COMMUNITY DEVELOPMENT
Received by: <u>KA</u>
Dept. of Community Development
Receipt #: <u>1088947</u>
Received by: _____
Board of County Commissioners
Date: _____

**Appellant(s)**

Name: JACKIE W STANFILL (CCCCWB)

Mailing Address: 2461 NORTHLAKE WAY NW  
BREMERTON WA 98312  
City State Zip

Daytime Phone No.: 360-373-3305

Statement: SEE ATTACHED

Signature: Jackie W Stanfill

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City State Zip

Daytime Phone No.: \_\_\_\_\_

Statement: \_\_\_\_\_

Signature: \_\_\_\_\_

Appellant(s)

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_ City State Zip

Daytime Phone No.: \_\_\_\_\_

Statement: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_ City State Zip

Daytime Phone No.: \_\_\_\_\_

Statement: \_\_\_\_\_

Signature: \_\_\_\_\_

If multiple parties are filing a single appeal, you must designate one party as the contact representative for all contact with the Department of Community Development Director. Kitsap County Code Title 21 Chap 04 Section 120.C.2.

Designated Contact Representative

Name: TIM BOTKIN

Mailing Address: 6758 CHICO WAY

BREMERTON City WA State 98312 Zip

Daytime Phone No.: 360-509-7097





KITSAP COUNTY  
DEPARTMENT OF COMMUNITY DEVELOPMENT

Receipt Number: 102004492728

619 DIVISION STREET, MS-36, PORT ORCHARD, WASHINGTON 98366 (360)337-5777 FAX (360)337-4925  
www.kitsapgov.com/dcd/

Receipt Date: 04/05/2010 Cashier: KSHADBOL Payer/Payee Name: CCCCWB Linda Laine

Permit #	Fee Description	Original Fee Amount	Amount Paid	Fee Balance
10 88947	Permit Center Base Fee	\$90.00	\$90.00	\$0.00
10 88947	Appeal Objection	\$500.00	\$500.00	\$0.00
		<b>Total:</b>	<b>\$590.00</b>	

*Previous Payment History*

Receipt #	Receipt Date	Fee Description	Amount Paid	Permit #
Payment Method	Check Number	Payment Amount		
CHECK	98-8022	\$ 590.00		
	<b>Total:</b>	<b>\$590.00</b>		

**Check Your Permit Status Online or by Phone**  
Website: <http://www.kitsapgov.com/dcd/> and click Permit Search.  
Telephone: (360) 337-5777

**Permit Expiration**  
Your permit is valid for 180 days\*. Your permit is automatically extended for an additional 180 days each time you have an approved inspection. (Note: A failed inspection does not extend your permit.) If you would like to request an extension, please contact (360) 337-5777.

*In accordance with Community Development fee policies, the base fee is determined by an average processing time. If staff hours required to process the permit exceed the base fee, additional charges may be incurred. Refunds may also be issued for those permits that require less processing time. All additional charges and/or credits must be approved by management.*

\*A reactivation fee will be charged on all expired permits.

Kitsap County  
Board of County Commissioners  
614 Division St.  
Pt. Orchard, WA 98366

April 5, 2010

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APR - 5 2010

KITSAP COUNTY DEPT. OF  
COMMUNITY DEVELOPMENT

NOTICE OF APPEAL

Hearing Examiner Decision # 091008-021  
Ueland Tree Farm Mineral Resource Development

This document is submitted to the Board of Commissioners pursuant to KCC 21.04.120. The public hearing for this project was consolidated to include both an appeal of the Final Environmental Impact Statement (FEIS) issued for the project and for hearing on the Conditional Use Permit (CUP) application. Both elements of that hearing were included in this Decision and this notice constitutes additional appeal of each.

The appeal is prosecuted on behalf of the Concerned Citizens of Chico Creek Water Basin (CCCCWB), which also presented the original FEIS appeal. As the CCCCWB is a group of local citizens, approximately 80 of whom have contributed to this effort, they have selected Tim Botkin as their official representative for the purposes of this appeal.

The CCCCWB is a neighborhood group, mostly residents and owners of property along North Lake Way. While modest appearing from the roadway, this frontage is the facade for one of the most unique combinations of human and natural environments in Kitsap County. The backyard of most of these properties includes stream frontage on Dickerson Creek or Kitsap Creek, or after they merge as Chico Creek, one of the most critical stream environments in the region. Behind the homes lies a very complex and beautiful ecosystem which, over the years, has become one of very few in the region which remains essentially intact and highly functional ecologically.

Because of their unique qualities, many of these properties have remained in family ownership for generations, as testified by several appellants at public hearing. These families, though their backyards are inextricably linked to the streams; coming alive each fall with salmon runs, creating nervousness in periods of high rain and potential flooding, the subject of many childhood and local stories about life on the creek. Residents have acted as advocates and stewards for the creek and the neighborhood, and this common bond has led to their unified voice on other matters in the neighborhood, particularly related to traffic and safety along North Lake Way. It is the fear, and the reality that much of this lifestyle will be compromised by the proposed mining operation, that brings these citizens to this appeal.

The specific property which is the site of the proposed mining operation lies literally and figuratively above this neighborhood. It is well-known to residents and visitors as these and previous owners have provided pedestrian access to the old logging roads through beautiful forests and even a waterfall. Yet the appellants do not pretend that they should dictate the property owner's use of the subject site

itself. It is the downstream impacts, again literally and figuratively, flowing off the site, through and onto appellants' properties and community, which necessitates this response. The subject site sits on the highlands above CCCCWB properties, and the record establishes that the mining operations will create very significant volumes of noise, dust, huge truck traffic and changes to water flowing down through the valleys and roadways; creating impacts which would irretrievably alter and the quality of life and property interests of the Appellants.

Clearly the hearing examiner felt compelled to find the means to approve the project. In instances the decision reflected what may be considered a reach in order to allow approval of the project. For example, roadway shoulders and widening were required in order to address safety concerns along North Lake Way. These serve to enhance the ability of trucks to travel at higher speeds through the neighborhood. Does this mitigate or exacerbate the impacts of this traffic? When determined that many residents may have landscaped County right-of-way in front of their property in order to beautify it, the Decision described the exchange of that landscaping for road widening as a "temporary impact" to the owners, and their landscaping as merely "encroachment." (see **Decision Concl. # 3, p. 83**) As a result, issues of community character or quality of life – and likely safety overall - go right out the window.

While clearly the Hearing Examiner dutifully crafted a rather massive decision, which essentially incorporated the cut-and-paste list of 160+ conditions in the Staff report, the sheer number of conditions and justifications can be looked upon either as exhaustive of possibilities or as an indication that the project creates so many issues and is so impactful that even should the list of conditions go on interminably it would not ensure a "compatible" project.

That finding of compatibility is the crux requirement for a Conditional use permit, and essentially for a finding of SEPA compliance. As stated in the decision, and as known in the county code as the basis for this type of decision,

*"...approval with conditions may be granted only when all of the following criteria are met:*

- 1. The proposal is consistent with the Comprehensive Plan.*
- 2. The proposal complies with the applicable requirements of this title.*
- 3. The proposal will not be materially detrimental to uses or property in the immediate vicinity,*
- 4. The proposal is compatible with ... the existing character, appearance, quality or development and physical characteristics of the subject property and the immediate vicinity.*

*C. If the approval criteria cannot be met or conditions cannot be imposed to ensure compliance with the approval criteria, the conditional use permit shall be denied.*

**Decision p. 74, KCC**

The Hearing Examiner is somewhat limited to the existing laws and decisions which may pertain or be made analogous to the specific circumstances of this Kitsap County application. On the other hand, the Kitsap County Board of Commissioners, as the elected watchdogs of the public interest, are clearly much

better qualified and authorized to determine what is “compatible” with or “detrimental” to property or uses in the vicinity, and even what constitutes the “vicinity.”

It was established at the hearing that the proposed mining operation will result in many hugely significant impacts to this neighborhood, though in some cases the impacts may not be clearly known.

These include:

- 1) The “mountain top mining” or vertical excavation to a depth of up to one hundred feet of approximately 152 acres of the upper Chico Creek basin.
- 2) The significant disruption of water flows within the total 400 acre site in the headwaters of the critical Chico Creek basin, the impacts of which are not certain.
- 3) The intrusion of noise and dust from the continuous operation of heavy equipment, including rock crushing and routine blasting, across Kitsap Lake and down the valleys of Dickerson Creek, in amounts expected to eradicate a variety of fauna, and to the obvious detriment of local residents.
- 4) The generation of an enormous – estimated at 900% by the Ueland expert (per testimony of Applicant engineer Perlis) – increase in large truck traffic onto North Lake Way. Perhaps the smallest of these trucks would be the concrete trucks; the largest being over-sized dump trucks with a second “pup” trailer dump of similar size attached, spanning a length of approximately fifty feet altogether (see photo presented by DCD staff during final testimony of Dennis OOST). It is projected that there would be 154 daily large truck trips on Northlake Way, which averages to a big truck lumbering in front of these homes every five minutes all day long. In total, the project is projected to generate “2.75 million truck trips over the life of the project.” See Applicant’s Access Feasibility Analysis, FEIS Appendix B, p. 2 & 3.
- 5) Even following the conclusion of the appeal, the amendment of the project and the hearing examiner Decision, the status of the concrete batch plant and railroad remain unclear. Each of these, in particular the batch plant, could constitute major projects in themselves and merit more specific scrutiny.
- 5) There will be a resultant property value reduction to existing property owners in this area. Neither the County nor the Applicant investigated this outcome to weigh its quantitative impact on the project decision. The Appellants provided an opinion letter from a qualified expert in this regard.
- 6) On a variety of occasions, the Applicant, County and Hearing examiner alluded to the justification of the impacts of this project because it would be supplying mineral resource to the Kitsap community exclusively. (see Decision FF # 32 p. 16) However, there is no apparent restriction on sales of product, nor is there a conceivable means of enforcing the same.

While the Appellants concede that the Applicant property owner has the right to use of its property in accordance with the law, it is inconceivable that the uses proposed can be considered compatible with the CCCCWB neighborhood, and would clearly be detrimental to this established neighborhood.

The following are the errors in the Decision constitute specific bases for this appeal:

**1) Compliance with Kitsap Comprehensive Plan** The Hearing Examiner erroneously ruled that the mining operation application complied with the Kitsap Comprehensive Plan. In doing so, she accepted the proposition that the Mineral Resource Overlay designation, which is the process for amending the Comp Plan to include this type of facility, need not be used. (see Decision fn 12, p. 10) This required the conclusion that the activity should be approved before the activity is allowed under the Comprehensive plan, effectively undermining the public legislative process with a private permit hearing. This is a throwback to pre-Growth Management days, setting a very dangerous precedent and cannot be allowed.

**2) Compliance with Kitsap County Zoning Ordinance** In its pre-hearing statement, and again at the hearing the Appellants raised issues concerning the allowability of certain uses on the Ueland site which are restricted in the zoning ordinance. These included limitations on rock crushing, top soil production, retail sales, manufacturing and the concrete batch plant (unclassified/non-specified uses). While the decision did not specifically address each of these uses, it appears that their use was approved by the hearing examiner, in violation of county code. On its face, these uses are limited/prohibited and therefore the Decision is in error

**3) Conclusion that Information and Conditions Sufficient to Protect Chico Basin** While there is in fact voluminous information in the file regarding the assessment of conditions, projection of impacts and proposal of mitigation to protect Chico Creek, there remain too many expressed and inferred ambiguities to conclude that there remain no significant adverse environmental impacts. Essentially, approval was made despite the fact that “the extent the shallow water aquifer on-site contributes to stream flow is not fully understood.” (see ex. # 118, p. 12 sec. (f); Decision FF # 141-3, p. 55) Given the amplitude of the project proposed, coupled with the critical nature of the hosting Chico Creek basin, ambiguities are not sufficient to prevent irretrievable damage to this precious community asset. Therefore, both the denial of the Appellants’ SEPA appeal and approval of the CUP in light of these circumstances constitute error.

**4) Conclusion that Impacts from Truck Traffic were Sufficiently Mitigated** Testimony and exhibits at hearing led to the conclusion that the above described truck traffic would cause several new impacts to North Lake Way. These include;

a) Danger to other vehicles and pedestrians from “windwash”. HE FF #123, p. 47.

b) Danger from spilled and flying gravel. HE fn 45, p. 66, Cond. # 123.

c) Safety issues due to conflicts with school and transit buses using the roadway. **HE FF # 121** It should be noted that the finding made regarding bus traffic did not include a full analysis of all trips as presented by Appellant witness Linda Laine. (see ex. 118(f))

d) Rapid deterioration of the roadbed, which has not been rebuilt to “minor arterial standards” despite its paper designation. (per testimony of DCD staff Dennis Oost, see **FF # 115, p. 45**)

e) Likely requirement for County financial and repair resources to prevent roadway falling into “unusable” condition. (per testimony of DPW staff Shawn Alire)

f) Impact to current roadway users from highly increased repair/reconstruction of roadway.

g) Likely increase in safety issues at the North Lake/Seabeck highway intersection. (see **Cond. # 189**)

h) Likely reduction in property values of North Lake properties in a range of from 5-15%. (see ex. # 188(h))

i) Loss of neighborhood character by removal of landscaping and widening of road in a limited right-of-way and in closer proximity to existing homes. (see **Concl. # 83 p. 83**)

The Hearing Examiner erroneously concluded that these impacts could be mitigated by a collection of road improvements and routine truck safety standards. Conditions fail to provide adequate mitigation and thus the conclusions of the Hearing Examiner constituted error.

**5) Conclusion that South Access Alternative was not Appropriate Mitigation** At the hearing there was extensive evidence and testimony regarding the development of a “south access” - which had been previously studied and preferred for the Port Blakely Kitsap Lake project on adjacent property – as a means for dramatically reducing the land use impacts of the project. (see **FF # 30, p. 15**) This alternative had been rejected by the Applicant as more expensive [but see paragraph below], because it required purchase of properties by the Applicant or because of a claimed denial of access by the City of Bremerton. For an analysis of the financial calculations see Appellant brief, ex. 118, p. 7 sec. (e), wherein it is noted that impacts to the existing community are completely disregarded. As to the latter issue regarding access across Bremerton lands, **Finding # 29** of the Decision does not fully quote the letter from the City which includes caveats (see **ex. 52**) and ignores the City’s cooperation in a previous plan to create a new access, as established throughout the record. The Hearing Examiner was not familiar with the south access alternative, and should have required the Applicant and staff to more fully determine its viability, and failure to do so was the basis for a claim of error.

**7) Conclusion that Overall Environmental impacts Acceptable** The overall and cumulative impacts of the project are discussed throughout the decision and its elements. In addition to those itemized, these include noise and dust generation from project activities and truck operations, improperly treated stormwater, damage to ecosystems, hydrology, fish and wildlife, concerns for future development and

others. The accumulation of these impacts should have led the hearing examiner to grant the Appellants' appeal of the FEIS and failure to do so constituted error.

**6) Ex Parte Admission of Post-hearing Project Change** As described in the Decision, following the close of the hearing and on the date for submittal of final documents, the Applicant submitted directly to the hearing examiner a proposed modification to the project application, which was accompanied by an undocumented grant of a "conservation easement" to a third party, which the Applicant described as a great benefit to the community" in the newspaper before submitting to the examiner. Appellants objected and pointed out that the changes in the project would change some of the submitted calculations and should be presented as part of the public hearing. Specifically, the assumed withdrawal of Gravel Mine "B" would significantly change the financial analysis used by the Applicant to justify its use of North Lake Way instead of a south access. It was an error for the hearing Examiner to accept this ex-parte evidence and change in the proposal without allowing public comment and question to clarify its ramification.

These specific points of appeal are merely the touchstones for the larger issues relating to the protection of property rights of existing land owners, the consideration of indirect costs and the respect for quality planning and community development. Each of these points will expounded upon and more fully articulated upon oral presentation to the Board of Commissioners.

Respectfully submitted,



Tim Botkin

Appellant CCCWB Representative