

Before the Hearing Examiner
For Kitsap County

In the Matter of the Appeal of the)	No. 07-44975
)	
Concerned Citizens of Chico)	Ueland Tree Farm
Creek Water Basin (CCCCWB))	Mineral Resource Development
)	
Of the Final Environmental Impact)	
Statement issued by Kitsap County)	Memorandum and Authorities of
For the)	Appellant CCCCWB
Ueland Tree Farm)	
<u>Mineral Resource Development</u>)	

Overview The appeal of Kitsap County’s issuance of the FEIS for the Ueland Tree Farm Mineral Resource Development was timely filed by Jack Stanfill personally and on behalf of his neighbors in the area, who have come together as a group known as the Concerned Citizens for the Chico Creek Watershed Basin. This is a dynamic group, made up of 60 – 100 residents of properties nearby the proposed mining operation, and each of whom are personally affected by it.

The appeal touched on many areas of concern including the road and rail transportation; adjacent land uses; hydrology, fish/wildlife and watershed impacts; and concern about future development and additional impacts. This memorandum will 1) organize and

Concerned Citizens of Chico Creek Water Basin
Appeal of EIS

support the arguments established in the EIS appeal document for the purposes of challenging the adequacy of the FEIS, 2) provide issues of concern regarding the willingness/ability of the applicant to avoid or adequately mitigate the environmental impacts identified in the FEIS, and 3) state issues of concern relating to the pending Conditional Use permit application.

Regulatory Issues For the most part, these issues relate to the structure of local regulatory authority and to the adequacy of the Environmental Impact Statement. SEPA requires that all “probable adverse environmental impacts” be identified and sufficiently mitigated or the permit may be denied on the basis of SEPA. **KCC 18.04.C**. The impacts and reach of this proposal are tremendous and require mitigation far beyond that currently identified in the FEIS. The following issues provide a backdrop for this discussion. Many of the issues are discussed in more detail further below.

- a. **The zoning designation for the subject properties does not allow many of the uses applied for by the Applicant.** Kitsap County has a long record of using zoning as a means of distinguishing and protecting its historic forest lands. While generic rural designations remain, important large tracts are specifically zoned to protect the forest resource. The several parcels of property which comprise the subject of this development application are zoned either Rural Wooded (RW) or Forest Resource Lands (FRL). Permitted uses, whether outright or by application, for these designations are listed in the tables contained in **KCC 17.381.040(E)**. Some uses are marked with

footnotes which indicate “additional restrictions” KCC **17.381.050**. The following is a summary of uses found in the table which are pertinent to this project:

Aggregate extraction: Permitted by CUP in RW, permitted but limited in FRL by footnote 4 to “no greater than two acres for the purpose of construction and maintenance of a timber management road system, provided the total parcel is at least 20 acres.”

Rock crushing: use via conditional use permit is limited by footnote 39 which restricts rock crushing to “...purposes of construction and maintenance of a timber management road system.” Both RW and FRL are treated the same.

Top soil production: prohibited in both zones.

General retail: prohibited in both zones.

Related (nursery, farm, storage, etc.) retail: prohibited in both zones.

Wholesale nursery: Permitted in RW but not in FRL.

Manufacturing: All manufacturing is prohibited in these zones.

Lumber and bulky building material sales: prohibited in both zones.

Unclassified Uses: KCC **17.381.030 (C)** Except as provided in Section 17.100.040 Allowed uses, “if a use is not listed in the use column, the use is prohibited in that designation.”

Concrete batch plant: This use is not listed in the zoning ordinance.

Therefore reference should be made to the “Allowed uses” direction of KCC **17.100.040**.

“When a use is not specifically listed in this title, it shall be understood that the use may be allowed if it is determined by the director that the use is similar to other uses listed...” KCC **17.100.040**.

However, all similar uses in these zoning designations (see above specifically) are prohibited or severely restricted to forest-related uses. A concrete batch plant should be similarly treated and prohibited in the zone.

As this application does not include any reference to “forest management” activities, the project’s proposed elements for rock crushing, top soil production, retail sales, and concrete batch plant should be denied.

- b. The Mineral Resource overlay designation is intended to protect resources for the community, but does not provide a bootstrap for incompatible plans which disrupt adjacent land uses.** Both the state Growth Management Act and the Kitsap County Code address the importance of protecting mineral resources. The specific wording of the county authority, provided as a zoning “overlay” is very clear:

“The intent of this overlay is to protect and enhance significant sand, gravel and rock deposits as identified mineral resource lands. It is also used to ensure the continued or future use without disrupting or endangering adjacent land uses, while safeguarding life, property, and the public welfare...” KCC **17.380.010**

The FEIS and applicant have fairly argued that the mineral resource underlying their land is important and should be protected. The analysis seemed to infer an accompanying right to extract the resource due to this authority. But the purpose

of the ordinance is twofold: 1) it protects the resource for the long term, and 2) it protects adjacent land uses from activities which may occur during extraction. It is inaccurate to extend any regulatory preference to a claimed right to extract and profit from this resource at the expense of others – particularly those holding legal adjacent land use rights. On more than one occasion the FEIS uses financial or other hardship as the basis that the applicant is not required to mitigate its likely impacts. That authority does not exist and the County erred in approving the EIS which provided the same.

- c. **In various areas the application and EIS rely on vague references or speculation and provide inadequate analysis of project impacts and suitability.** In addition to that above, examination of other areas was avoided when hard to determine.

Potential rail service to mitigate traffic issues was not pursued on the basis that “Department of Defense permission is required” (despite the fact that commercial traffic is now running on the rail line), leading to the response that “not enough is known about the rail” to determine the extent of impacts (DEIS p. 3-14).

Of even more concern, the concrete batch plant was typically referred to as “an option”, “depending on economic feasibility and market demand”, (DEIS p.1-11) leaving it unclear whether the applicant is seeking that approval or not. Even though perhaps the single most impactful component of the project, this somewhat coy approach seemed to provide the basis for incomplete analysis and its elements and impacts were never individually well-delineated.

The EIS reviewed the significance of Kitsap Lake, which was characterized as “an important hydrologic feature” in the critical Chico Creek basin, concluding that the lake “receives drainage from the eastern portion of the UTF site (stream segment 13 [which drains important wetland1]) but this area was not specifically reviewed.”

These omissions are significant and require additional analysis, project amendment or project denial.

- d. The “Development Alternative” in the EIS does not provide for a real alternative to the applicant’s proposal, and specifically with regard to access alternatives, therefore falling short of the requirements of the SEPA.** A required element of the EIS process is the exploration of alternatives “that could feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation.” WAC 197-11-440. The “Reduced Scale Alternative” described in the EIS omits one of five mining facilities, and clarifies that the concrete batch plant would not be developed. The applicant states that “this alternative does not fully meet the proponent’s objectives for the project” (DEIS p. 1-14) but does not describe what those objectives are.

This alternative is stated to have been developed to reduce environmental cost.

But that is highly questionable. In effect, this proposal reduces the timeframe of the project from a period of fifty years to one of approximately thirty-five to forty years. All facilities except the concrete batch plant would still be built, and all

impacts would occur for a still exceedingly long time. Curiously, this alternative omits the optional rail access, which may serve to actually reduce environmental impacts.

Substantive Impact issues

- e. **The EIS uses a faulty environmental impact analysis to discredit access alternatives on a financial basis, and fails to consider the full impacts of its Proposed Development Alternative.** Perhaps the most glaring area of concern in regard the consideration of credible alternatives is the failure of the EIS to consider other access routes, particularly to the south and perhaps by using rail instead of trucks to transport gravel products. A hugely significant element of the subject proposal is the proposed access via Northlake Way, through an existing residential community. Due to the amount of concern from the community over this issue, the County directed the Applicant to supplement the EIS with additional analysis which is found in Appendix B of the FEIS.
- This appendix entitled the “Access Feasibility Analysis” purports to measure and compare the impacts of the access route included in the development proposal, the “North Access” versus two options for a “South Access”. Both of the latter options provided access via the “adjacent 440 acre site” – otherwise known as the Port Blakely property – and connecting to Werner Road in West Bremerton, a largely industrial connector, thus avoiding direct impacts to existing residential communities.

[It should be noted that significant analysis was conducted by Port Blakely and additional alternatives for that project – using the same access routing as proposed for this project – will be discussed at hearing.]

The Applicant’s consultants concluded that the North Access is the preferred route. The reason for this is clearly due to Applicant’s perception of an increased financial cost to build additional roads. While not widely addressed in the EIS, this was summarized in the Access Feasibility Analysis. This analysis is faulty in that it does not take into account the impacts to existing residential properties and families, bears solely on the perceived initial financial cost to the Applicant, and even then is skewed unfairly toward making the proposed alternative look more cost effective.

These points are underscored in the summary and tables associated with the above referenced Access Feasibility Analysis at page 5.

Table 1 identifies only “sensitive area impact”, which is limited to areas subject to new road construction, thus leading to the obvious conclusion that the North access, running through the Appellants’ neighborhood has no impacts.

Table 2 references “Estimated Cost Impacts” for the three alternatives – limited to financial costs. Areas considered are construction, acquisition and hauling costs.

With regard to acquisition, the report estimates the cost for outright purchase of up to 8 properties to provide access for a southern route. It is not explained why the purchase of access easements may not suffice. Unaccounted for is the Applicant’s previous purchased of several properties necessary for the north access, the cost of which was not included in the analysis at all.

It should also be noted that the “hauling” cost is based upon mileage from a base of operations near the north access point (and closest to nearby residential areas of the appellants) which lead to the higher hauling cost for the southern alternative routes. There is no explanation why the operations base could not be located near the basalt quarries at the south end - where in fact more gross basalt material is located - which would sway hauling cost in favor of southern access points.

The Applicant’s consultant concluded that “overall environmental impacts and costs are far greater than that of the north access road...” even claiming that the north access will “be a benefit to adjacent properties.” See Access Feasibility Analysis at pg. 5. This opinion is not shared by those living on the north route which would bear witness to the “2.75 million truck trips” projected to occur over the next fifty years. See Access Feasibility Analysis at p. 2 & 3.

In both the context of access alternatives and with regard the “Reduced Scale Alternative” the EIS effectively undervalues the alternatives process, and should be considered insufficient. Nowhere are the actual impacts to nearby properties, transportation or water resources actually reduced. The EIS should be remanded for the purposes of exploring these areas and developing real alternatives.

- f. The impacts of proposed heavy truck traffic on other users of Northlake Way are extreme and not mitigated by the EIS.** The Appellants will provide testimony describing the current state of Northlake Way. Most of the properties lining this road contain stream frontage on Dickerson Creek or Chico Creek in the backyards. There are approximately 150 homes on the route chosen by the

Applicant for access to its mining operations, and the road is consistently pierced by driveways. Site distance is limited in some areas and shoulders are inadequate for most of the route. There are 9 school bus stops along this route. Two schools and the Holly Ridge Center, an early intervention/adult developmentally disabled employment center, create significant traffic for parents and kids. It is designated a part of the Kitsap County Bikeway.

The intrusion of 186 heavy truck trips – recognized by the EIS and staff report to average one truck every five minutes (or more frequently at peak times) - is wholly incompatible with this neighborhood. It is otherwise estimated to generate a total of “2.75 million truck trips over the life of the project.” The range of detrimental impacts provides a long list: safety of school children, conflicts with pedestrians and bicyclists, flying gravel, noise and vibration, rapid degradation of the roadway, property devaluation and more.

These impacts have not been adequately mitigated in the EIS or by the proposed project conditions and provide the basis for denial of the project application. See KCC 18.04.200.C

- e. **The EIS failed to analyze the likely effects of proposed heavy truck traffic on existing road infrastructure.** Based upon discussions occurring after completion of the EIS the Applicant and County agreed that an analysis of proposed truck traffic impact to the Northlake Way road structure will be undertaken. This discussion is articulated as proposed condition #186 in the county Staff Report.

The analysis be based upon tonnage rather than traffic counts, and will “determine

what impacts (i.e. premature failure) these loads could cause.” The condition is intended to provide a formula for determining the Applicant’s share of the cost of road repair due to its excessive loads.

While this is appropriate, the concept should have been expanded and conducted as a part of the EIS to determine the actual impact of – versus who should after the fact pay the cost for – a potential destruction of the road bed for Northlake Way. **WAC 197-11-44** specifically includes “transportation systems” as an impact to be considered, and the issue of roadway impact, not cost sharing, is significant in this context. Quite likely, Northlake Way was not constructed to withstand the incessant load of extremely heavy trucks, and may fall into disrepair in short order.

Meanwhile, the residents and transients of the area would be forced to contend with a degraded and unsafe road while the County and Applicant decide how it should be funded. But that issue is extraneous; the real impact is the road degradation and resulting problems which would severely diminish the Applicants’ use and enjoyment of their properties. The analysis of this issue should have been included in the original SEPA analysis and the failure to do so requires remand to the County, as a part of determining the acceptability of the access routing proposed.

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f. The proposal affirms that impacts will occur to local hydrology, yet fails to address them with adequate science. Chico Creek basin has long been recognized as one of the most critical watersheds in Kitsap County. Various reports which were part of the Port Blakely Kitsap Lake Joint Planning Area developed by Kitsap County approximately ten years ago noted that Chico Creek “is the single most productive spawning habitat for chum salmon in the south Puget Sound region.” (report by Associated Earth Sciences, Inc. entitled “Recommendations for the Protection of Aquatic Resources for the Port Blakely Kitsap Lake Joint Planning Area” dated May 12, 1999, p. iii). Regarding Dickerson Creek, it was noted that “it is certain that Dickerson Creek is delivering excellent water quality to the Chico Creek system. (ibid p. 3-6) Overall this report concluded that the best means of maintaining water quality would be through the use of infiltration mechanism for project generated stormwater, which is a means of replicating natural processes which provide for the absorption of water run-off into soils. In this manner rain is controlled, treated and metered into streams and aquifers as a part of a functioning eco-system.

Clearly the work done in support of this application pays heed to those recommendations as it there are frequent references to, and reliance upon “infiltration” as the means of managing run-off:

“Exacerbation of temperature exceedances is not anticipated for S&G-A or S&G-B due to proposed infiltration of surface water.” Prelim Drainage Plan at 2.7.1.

“Exacerbation of turbidity is not anticipated for S&G-A or S&G-B due to proposed infiltration of surface water.” Prelim drainage plan at 2.7.1.

However much is left to speculation, further design or “adaptive management” to ensure this end is met, and only after project approval is granted. Given the critical nature of the watershed and the likelihood that fifty years of hydrologic damage would permanently change the ecology of this system, it is imperative that additional research and disclosure be done in order to protect this environmental asset.

Identified water/hydrologic impacts include:

Water quality degradation.

Disruption to upper level groundwater flows.

Altered run-off patterns in a “precipitation driven” watershed

Increased water temperatures.

The following are issues which illustrate the open-ended, unaccountable approach taken by existing preliminary documents regarding the impacts and management of hydrology and stream conditions:

1. “The stormwater facilities for Q-A, Q-B and Q-C [all quarry sites] are considered temporary due to the temporary operational characteristics of the quarries.” Preliminary Drainage Plan (PDP) at 2.7.1 However, these facilities are by definition based on hard pan and do not provide much in the way of infiltration opportunity. All of quarry “A” and portions of quarry “C” are located in the Dickerson Creek drainage.
2. Stormwater run-off models were run on pre- and post- project conditions, but not on the 50 year operations period. DEIS p. 4-20.

3. It is well-established that Dickerson Creek is “precipitation-fed, making it highly susceptible to changes in surface water management. DEIS p. 4-2. The proposal projects that it will “alter surface hydrologic pathways” and provides a general reference to monitoring the extent of these alterations, but provides no methodology or commitment to addressing problematic issues. DEIS p. 4-18. PDP at 5.5.3.
 4. The plan speculates on infiltration capacity and location yet assumes all mine water will be infiltrated via ponds which are merely a fraction of the original contributing area to maintain the hydrologic integrity of Dickerson Creek. DEIS p. 4-19. In these locations, run-off and operational process water will be mixed at the point of infiltration, producing “some level of groundwater quality degradation.” DEIS p. 5-9.
 5. While admitting that groundwater degradation is gradual and insidious, monitoring is largely limited to wetland areas near the top of the site, instead of downstream where cumulative impacts will occur, and there is no enforceable commitment to identify impacts before they become irretrievable, let alone hold the project accountable for the likely damage.
 6. “Water quality has been a persistent problem in Kitsap Lake...Kitsap Lake receives drainage from the eastern portion of the UTF site (Stream Segment 13), but this area was not specifically reviewed.” DEIS p. 4-4.
 7. Areas downstream from the mines will be subject to destabilization and landslides due to the concentrated infiltration practices proposed. DEIS p 2-10.
- The plan calls for “additional mitigation” if unfavorable conditions are identified.

DEIS p. 2-12. But there is no specific monitoring mechanism to identify these before an occurrence.

The proposed mining project will generate tremendously significant impacts to downstream ecosystems and neighborhoods. In its current state, the environmental impact statement identifies some of these impacts, but nothing in the EIS or the project plan adequately avoids or mitigates. The project should be denied based on these issues, or remanded for modification to address the issues raised herein and at hearing.

Dated this ____ day of November, 2009.

Tim Botkin, CCCCWB representative

Sustainable Solutions