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April 3, 2026

Lewis County Hearing Examiner  
c/o Lewis County Community Development  
125 NW Chehalis Ave  
Chehalis, WA, 98532

Re: Petition for Review of the Findings of Fact, Conclusions of Law, and Decision  
Hearing No. SUP25-0001 and Public Hearing No. 26-2-001

Dear Hearing Examiner:

Enclosed please find a petition for review filed on behalf of Good Crushing, Inc., of the Findings of Fact, Conclusions of Law, and Decision for Hearing No. SUP25-0001 and Public Hearing No. 26-2-001 (“Decision”). The petition further challenges earlier decisions issued by the Lewis County Hearing Examiner denying Good Crushing, Inc.’s motion for reassignment. Good Crushing, Inc. is the applicant for the Decision, and I am legal counsel for Good Crushing, Inc. Consistent with LCC 2.25.130, a copy of the Decision, as well as the decisions denying the motion for reassignment, are also enclosed.

The enclosed petition for review is an appeal to the Hearing Examiner pursuant to LCC 2.25.120(4), LCC 2.25.130, and LCC 17.05.160. This petition for review is not a petition for reconsideration and shall not be treated as such.

As required by LCC 2.25.130(15), this appeal must be considered by a different Hearing Examiner than the Hearing Examiner who presided over the open record hearing in this matter and authored the Decision.

Sincerely,

Jesse DeNike

Enclosures



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BEFORE THE LEWIS COUNTY  
HEARING EXAMINER

IN RE: APPLICATION OF GOOD ) HEARING NO. SUP25-0001 and  
CRUSHING, INC. TO AMEND SPECIAL ) PUBLIC HEARING NO. 26-2-001  
USE PERMIT SUP19-0002 )  
) GOOD CRUSHING, INC.'S  
) PETITION FOR REVIEW OF THE  
) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW AND  
) DECISION  
)

Petitioner Good Crushing, Inc. (“Petitioner”), by and through its undersigned counsel, hereby brings this petition for review before the Lewis County Hearing Examiner. Petitioner is the applicant for the subject proposal and hence has standing to bring this petition. Further, Petitioner is aggrieved or adversely affected by the decision being appealed (specified below), which denied in part and granted in part Petitioner’s permit application. The subject decision is reasonably likely to cause prejudice to Petitioner, Petitioner is a party of record, a judgment in Petitioner’s favor would substantially eliminate or redress such prejudice, and Petitioner has exhausted its administrative remedies to the extent required by law.

The required contents of this petition, per LCC 2.25.130, are set forth below.

**1. Decision Being Appealed.**

Petitioner appeals the Findings of Fact, Conclusions of Law and Decision for Hearing No. SUP25-0001 and Public Hearing No. 26-2-001, issued by Lewis County

1 Hearing Examiner Mark. C. Scheibmeir (the “Decision”). The Decision is dated March  
2 24, 2026. Petitioner received an electronic copy of the Decision on March 25, 2026 and a  
3 hard copy of the Decision on March 31, 2026. A complete copy of the Decision is  
4 attached hereto as Exhibit A.

5 Petitioner further appeals earlier decisions issued by Hearing Examiner Mark. C.  
6 Scheibmeir denying Petitioner’s motion for reassignment and petition for reconsideration  
7 of the decision denying reassignment. These decisions are attached hereto as Exhibits B  
8 and C, respectively.

9 **2. County Code Provisions Authorizing the Appeal.**

10 Petitioner brings this appeal pursuant to LCC 2.25.120(4), LCC 2.25.130, and  
11 LCC 17.05.160.

12 **3. Grounds for Appeal.**

13 Summary

14 The Decision was issued in response to an application submitted by Petitioner  
15 under SUP 25-0001 to revise the hours of operation for limited activities at Petitioner’s  
16 quarry located at 699 Tennessee Road, Winlock WA 98596 (“Good’s Quarry”).

17 Good’s Quarry is a premier source for superior quarry products in Lewis County.  
18 Good’s Quarry includes two historic pits (the Johnson Pit and the Good Pit) as well as an  
19 expansion area. The Johnson Pit has been in operation since the 1960s and the Good Pit  
20 was permitted in 1997.

21 In 2021, Lewis County issued SUP19-0002 to expand mining operations at Good’s  
22 Quarry south from the Good Pit to the Johnson Pit, creating one contiguous mine area  
23 covering 141.8 acres. SUP19-0002 included 27 conditions. Condition 23 limited regular  
24 hours of operation (except for blasting, which was limited from 10:00 a.m. to 4:00 p.m.,  
25 Monday through Friday) from 7:00 a.m. to 5:00 p.m., Monday through Friday, but during

1 daylight hours only, and it required authorization from Lewis County Community  
2 Development for exceptions to these regular hours when the quarry will have limited  
3 evening or weekend work that may be required by the need for reduced traffic on public  
4 projects or to provide emergency responses. Condition 23 was imposed on the basis that  
5 other special use permits for surface mines in Lewis County had similar hours restrictions.  
6 Lewis County Hearing Examiner Findings of Fact and Conclusions of Law [Corrected],  
7 Hearing No. SUP 19-0002, Public Hearing No. 21-6-004 (May 18, 2021) p. 26.

8 Subsequent to issuance of SUP19-0002, it became evident that other surface mines  
9 in Lewis County are not restricted by the same or similar hour restrictions as set forth in  
10 Condition 23. Additionally, the theoretical possibility in Condition 23 for Petitioner to  
11 obtain extended operational hours for public or emergency projects proved ineffective.  
12 Petitioner requested extended operational hours from Community Development, but days  
13 passed before Community Development was able to respond, by which time the customers  
14 were forced to pursue other suppliers.

15 LCC 17.158.040 authorizes permittees to request and obtain revisions to special  
16 use permits. Depending on the scope of the requested revision, such proposals are  
17 processed as either a Type I or Type III application. *Id.* Petitioner availed itself of this  
18 opportunity in 2025, submitting an application to revise Condition 23 to allow for  
19 additional hours to conduct only two specific activities (processing and loadout), as  
20 follows (the “Proposal”):

- 21 • Daytime processing and loadout of customer trucks – up to 7 days per week, 7 am  
22 to 10 pm. Loadout will be limited to 20 loads per hour.
- 23 • Nighttime loadout of customer trucks – up to 7 days per week, 10 pm to 7 am.  
24 Loadout will be limited to 8 loads per hour.

1 Community Development determined that the application should be processed  
2 pursuant to the Type III process, and it deemed the application complete on May 16, 2025.  
3 Community Development issued a SEPA Threshold Determination of Non-significance  
4 (“DNS”) for the Proposal on May 28, 2025. No appeals of the DNS were filed. Thus, it  
5 was retained and is final and conclusive that the Proposal will have no significant impacts.

6 Community Development provided public notice of the Proposal’s application and  
7 accepted comments. Petitioner responded to comments and also provided technical reports  
8 demonstrating that, as proposed and mitigated, the Proposal will comply with all County  
9 Code requirements, including those related to noise and traffic. The accuracy and  
10 thoroughness of these technical studies is uncontested. Consistent with the County’s  
11 decision to issue a DNS for the Proposal, Commenters did not identify specific impacts  
12 that would be caused by the Proposal, as designed and conditioned.

13 Prior to the hearing, Petitioner filed a motion to have the matter reassigned to a  
14 Hearing Examiner other than Mr. Scheibmeir on the basis of the appearance of fairness  
15 doctrine, arguing that Mr. Scheibmeir’s personal relationship with the mother of a nearby  
16 opponent, Lona Lewis, warranted reassignment. Mr. Scheibmeir denied the motion,  
17 stating that he is unfamiliar with Lona Lewis and is “unaware of any friend or  
18 acquaintance in Lewis County with the last name of Lewis.” Exhibit B. Petitioner sought  
19 reconsideration of the denial, providing proof that Mr. Scheibmeir himself previously  
20 acknowledged that Lona Lewis is the mother of one of Mr. Scheibmeir’s best friends from  
21 law school, Robert Lewis. Nevertheless, Mr. Scheibmeir denied the reconsideration  
22 motion. Exhibit C.

23 Even though the Proposal will have no significant impacts and satisfies all code  
24 criteria relating to traffic and noise, Community Development’s staff report to the Hearing  
25 Examiner recommended a “compromise amendment” to Condition 23 that provided

1 Petitioner with reduced allowance for extended hours operations compared to the  
2 Proposal. Petitioner filed a response to the staff report immediately prior to the March 11,  
3 2026, hearing in this matter, explaining why the recommended “compromise amendment”  
4 is inadequate and inappropriate. Community Development staff did not specifically  
5 respond to or controvert the information presented in Petitioner’s response at the March  
6 11 hearing.

7 The Hearing Examiner declared at the outset of the March 11 hearing that he  
8 would evaluate the Proposal based on criteria that are found nowhere in the Lewis County  
9 Code – namely, principles governing res judicata. The Examiner subsequently granted  
10 Good’s Quarry’s request to amend Condition 23 in only a limited fashion, generally  
11 consistent with the “compromise amendment” recommended in the staff report. Decision.

12 The Hearing Examiner committed numerous errors in denying Petitioner’s request  
13 to reassign the Proposal to an alternative Hearing Examiner and in issuing the Decision.  
14 The Hearing Examiner’s denial of Petitioner’s reassignment request and Decision violate,  
15 among other things, LCC 2.25.070(2), Chapter 17.05 LCC, LCC 17.05.090, LCC  
16 17.142.020, LCC 17.142.210, LCC 17.158.040, the appearance of fairness doctrine, and  
17 laws restricting the jurisdiction and authority of the Hearing Examiner.

18 Specific findings and conclusions challenged by Petitioners are set forth in the  
19 below subsection. The principal errors in the Decision are as follows:

20 • The Decision errs in determining that the Proposal is prohibited by LCC  
21 17.142.210(2)(h). This code provision states regular hours of operation shall be between  
22 6:30 a.m. and 7:00 p.m. Petitioner is not requesting regular hours of operation beyond  
23 these hours. Rather, Petitioner is only requesting the ability to conduct two activities  
24 outside of these hours (processing and loadout), and even these would be conducted on a  
25 limited, as-needed basis, within strict limits governing their intensity.

1       • The Decision errs in evaluating the Proposal based on res judicata criteria. The  
2 Lewis County Code specifically provides for a process and standards whereby permittees  
3 may obtain revisions to previously-issued special use permits, which do not include res  
4 judicata criteria. The Decision misinterprets and misapplies the law in employing these  
5 criteria, and the Examiner exceeded his jurisdiction in relying on them.

6       • Although the res judicata criteria do not apply to the Proposal, the Decision further  
7 errs in determining that the Proposal does not satisfy such criteria.

8       • The Decision errs in determining that, even apart from the res judicata criteria,  
9 greater restrictions to operational hours beyond the standard hours provided in the County  
10 Code are necessary to protect quiet enjoyment of neighboring residential properties.  
11 Substantial evidence does not support this determination, and the Decision ignores  
12 extensive countervailing evidence and other information.

13       • The Decision errs in determining that the amendment to Condition 23 in the  
14 Decision is necessary to protect the quiet enjoyment of neighboring residential properties  
15 and is otherwise reasonable and appropriate.

16       • Hearing Examiner Scheibmeir erred in denying Petitioner's request to reassign this  
17 matter to an alternative Hearing Examiner.

18 Specific Findings and Conclusions Challenged by Petitioners

19       • The Decision errs in characterizing prior statements in SUP19-0002 as not being  
20 "challenged," particularly related to the need and justification for restrictions on Good's  
21 Quarry's hours of operations. *E.g.*, Decision pp. 3, 4.<sup>1</sup> This is not supported by substantial  
22 evidence, and it is contrary to the law. Petitioner challenges the need and justification for

23 \_\_\_\_\_  
24 <sup>1</sup> While these and other below-referenced pages of the Decision are in sections of the Decision  
25 preceding the Findings of Fact and Conclusions of Law, Finding of Fact 2 and Conclusion of Law  
2 incorporate the statements in these sections by reference as Findings and Conclusions, and hence  
they are properly challenged by Petitioner.

1 these restrictions and submitted voluminous information with the Proposal demonstrating  
2 that these restrictions are unwarranted and put Petitioner at a unique disadvantage  
3 amongst operators in Lewis County. To the extent that the Decision's characterization of  
4 these statements as unchallenged relates to the prior proceeding, such characterization is  
5 based on the Decision's erroneous use of the res judicata criteria.

6 • The Decision errs in characterizing the hearing as being attended by a "large  
7 crowd." *Id.* p. 5. This is not supported by substantial evidence. Hearing attendees fit  
8 comfortably within the modestly-sized hearing room.

9 • The Decision errs in failing to recognize that Tennessee Road, which provides  
10 access to Good's Quarry, is a designated freight corridor and in failing to take this into  
11 account when evaluating the characteristic of the neighborhood and the Proposal's  
12 impacts to the neighborhood. *Id.* p. 8.

13 • The Decision errs in determining that the Proposal is subject to a change to LCC  
14 17.142.210(2)(h) that was enacted after the Proposal's application vested, which limits  
15 emergency operations to six months per year. *Id.* p. 12; Lewis County Ord. No. 1367;  
16 LCC 17.05.090. This determination is not supported by substantial evidence and it is  
17 contrary to the law.

18 • The Decision errs in failing to recognize that Community Development staff did  
19 not provide any response for multiple days when Petitioner requested approval for  
20 extended hours operations to fulfill a BPA project. Decision pp. 13, 17. The Decision also  
21 errs in dismissing the undisputed, credible information provided by Petitioner that  
22 Community Development did not respond to this request for multiple days on hearsay  
23 grounds. *Id.* The Decision's finding and conclusions in this respect are not supported by  
24 substantial evidence and are contrary to the law.

25 • The Decision errs in characterizing the surrounding land uses as a "mix of mostly

1 rural and forest land uses.” *Id.* p. 13. This characterization is not supported by substantial  
2 evidence and is contrary to the evidence. Record evidence demonstrates the surrounding  
3 community is also largely characterized by resource and industrial uses.

4 • The Decision errs in finding that the Sterling Breen Pit’s special use permit was  
5 revised in 2017 to restrict operations from 7:00 a.m. to 4:00 p.m., Monday through Friday,  
6 with no weekend operations, and that its hours have remained the same since. *Id.* p. 16.

7 There is no evidence in the record to support this finding.

8 • The Decision errs in discussing Petitioner’s concerns with Community  
9 Development’s compromise amendment by simply stating Petitioner’s witness believes  
10 Petitioner has been denied the same opportunity granted to its competitors and objects to a  
11 proposed condition requiring mobile equipment to be fitted with broadband or other non-  
12 tonal backup alarms. *Id.* pp. 17-18. Petitioner also articulated numerous additional  
13 problems and deficiencies with the compromise amendment, which the Decision  
14 erroneously ignores.

15 • The Decision errs in characterizing the public comments as unanimously opposing  
16 Petitioner’s Proposal. *Id.* p. 18. This finding is not supported by substantial evidence.  
17 Further, the Decision errs insofar as it equates public opposition to the Proposal as  
18 evidence of adverse impacts, including but not limited to the quiet enjoyment of  
19 neighboring residential properties.

20 • The Decision errs in characterizing public comments as finding that the quarry’s  
21 operations greatly impact their daily lives; that current limits on days and hours of  
22 operation allow nearby property owners respite from impacts of the quarry and provide  
23 clearly established times when neighbors can conduct activities without risk of  
24 interference from mining operations; that neighbors and the Evaline School District  
25 especially fear the negative impacts of evening and nighttime operations; that surrounding

1 property owners feel that existing conditions strike a fair balance; and evening and  
2 nighttime operations would introduce various forms of lighting that currently do not exist.  
3 *Id.* pp. 18-19. These characterizations are not supported by substantial evidence and they  
4 are contrary to the law. They are not a complete and accurate characterization of all public  
5 comments. Further, the Decision errs insofar it equates public opposition to the Proposal  
6 as evidence of adverse impacts, including but not limited to the quiet enjoyment of  
7 neighboring residential properties. The Decision also errs in failing to account for the  
8 voluminous record evidence demonstrating that the Proposal, as designed and  
9 conditioned, will not adversely impact the quiet enjoyment of neighboring residential  
10 properties such as to necessitate additional limits. The Decision also errs in failing to  
11 account for the fact, that for the vast majority of Good's Quarry's operations (prior to  
12 2001), there were no nighttime or weekend hour restrictions yet no complaints from  
13 residential neighbors were received indicating that operations disrupted the quiet  
14 enjoyment of neighboring residential properties. This dearth of complaints undermines the  
15 findings and conclusions in the Decision that day and hour restrictions are necessary to  
16 protect the quiet enjoyment of neighboring residential properties.

17 • The Decision errs in determining that the Proposal's request to operate during  
18 evening and nighttime hours is expressly precluded by LCC 17.142.210(h). *Id.* pp. 19, 20.  
19 This determination is not supported by substantial evidence and is contrary to the law. The  
20 Proposal does not request expansion of regular hours beyond those provided in LCC  
21 17.142.210(h). The Proposal requests only limited operations (processing and haulout), on  
22 an as-needed basis only, and subject to strict limits to ensure compliance with all County  
23 Code criteria. The Decision errs in characterizing and interpreting limited operational  
24 hours during which only loadout and processing would occur under the Proposal as  
25 equivalent to "regular hours of operation" for purposes of LCC 17.142.210(h).

1       • The Decision errs in determining that the doctrine of res judicata applies to the  
2 Proposal. *Id* pp. 19, 20-23. This determination is not supported by substantial evidence  
3 and it is contrary to the law. The County Code specifies a process and standards for  
4 special use permit decision, which do not include res judicata. *E.g.*, LCC 17.158.040;  
5 Chapter 17.05 LCC; LCC 17.142.020; LCC 17.142.210. The Decision errs in subjecting  
6 the Proposal to a standard (res judicata) that is not in the Lewis County Code. The Hearing  
7 Examiner, as a creature of the County Code, exceeded his jurisdiction in applying this  
8 doctrine, which is outside of the County Code. The Decision errs in determining that  
9 Lewis County must “say” if it “does not want res judicata applies to Special Use Permits,”  
10 and it mischaracterizes LCC 17.05.140(4) and LCC 17.158.040. Decision p. 22.  
11 Consistent with res judicata not applying to the Proposal, Community Development never  
12 suggested that res judicata applies during review of the Proposal, and there is no record  
13 evidence that Community Development or the Hearing Examiner has previously subjected  
14 special use permit revisions to this doctrine. There is, however, record evidence that the  
15 Hearing Examiner has previously approved a special use permit revision for a surface  
16 mining operation without subjecting it res judicata.

17       • The Decision errs in determining that res judicata requires Petitioner to  
18 demonstrate a substantial change in circumstances. *Id*. pp. 22-23. This determination is  
19 contrary to the law. Even if res judicata were to apply (it does not), the doctrine allows a  
20 second application to be considered “if there is a substantial change in circumstances  
21 or conditions relevant to the application or a substantial change in the application itself.”  
22 *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wn.2d 22, 33, 891 P.2d 29, 35  
23 (1995) (emphasis added). The Decision errs by ignoring the second prong of this analysis  
24 (change in the application).

25       • The Decision errs in determining that, were res judicata to apply to the Proposal,

1 the Proposal would fail to satisfy this doctrine. Decision pp. 19, 23-24. This determination  
2 is not supported by substantial evidence and it is contrary to the law. As set forth directly  
3 above, the Decision ignores that changes in the application constitute grounds for allowing  
4 a second application to proceed, and there are significant changes in the Proposal  
5 compared to the application presented in SUP19-0002 (including with respect to the  
6 number and nature of activities, the intensity of activities, and mitigation). There are also  
7 substantial changes compared to the prior proposal, including knowledge of fully  
8 functional surface mines that are subject to similar hours restrictions as Good's Quarry  
9 and the feasibility of Condition 23 to accommodate extended hours operations.

10 • The Decision errs in determining that restricted hours of operation are necessary to  
11 protect the quiet enjoyment of neighboring properties. *Id.* pp. 24-26. This determination is  
12 not supported by substantial evidence and it is contrary to the law. The Decision errs by  
13 relying on extra-record information as to alleged actual hours of operation listed by other  
14 mining operations in Lewis County and failing to recognize that, even if these are the  
15 regular hours of these operations, they can and may conduct work limited work outside of  
16 regular work hours, as Petitioner requests in the Proposal. *Id.* pp. 24-25. The Decision errs  
17 in determining that Good's Quarry is more tightly ringed by rural residential properties  
18 than other quarries in Lewis County. This finding is not supported by substantial evidence,  
19 and it is contrary to substantial countervailing evidence.

20 • The Decision errs in finding that Lewis County has been able to acquire all needed  
21 rock for its public works projects without requesting special operations by any quarry. *Id.*  
22 p. 26. This finding is not supported by substantial evidence, and, even if true, it ignores  
23 that public works projects may have been able to secure all needed rock in large part  
24 because other quarry operations in Lewis County are not subject to the same or similar  
25 days and hours limits as Good's Quarry has been restricted to since 2021.

1       • The Decision errs in determining that the compromise amendment recommended  
2 in the Community Development is “sensible” and by concurring in this recommendation.  
3 *Id.* p. 26. This determination is not supported by substantial evidence and it is contrary to  
4 the law. The recommended changes in the staff report’s compromise amendment are not  
5 necessary to protect quiet enjoyment of neighboring residential properties, and they are  
6 not otherwise sensible or appropriate.

7       • The Decision errs in incorporating by reference all findings of fact contained in the  
8 findings of fact for SUP19-0002. *Id.* p. 27 (Finding 4). The findings of fact in SUP19-  
9 0002 are not supported by substantial evidence in the current record, and it is contrary to  
10 the law for the Decision to incorporate these findings here.

11       • The Decision errs in finding “[s]urrounding development and land uses has remain  
12 unchanged since the Special Use Approval Date.” *Id.* p. 28 (Finding 9). This finding is not  
13 supported by substantial evidence.

14       • The Decision errs in determining that the applicable version of LCC 17.142.210(h)  
15 restricts emergency operations to six months. *Id.* (Finding 10). This determination is not  
16 supported by substantial evidence and it is contrary to the law. The Proposal’s application  
17 was deemed complete prior to enactment of the six-month limitation and hence it is vested  
18 to the version of LCC 17.142.210(h) prior to this limitation. LCC 17.05.090.

19       • The Decision errs in finding “[s]ince the Special Use Approval Date, Lewis  
20 County Public Works has satisfied all of its needs for rock material through normal hours  
21 of quarry operations.” *Id.* p. 28 (Finding 12). There is no substantial evidence in the record  
22 supporting that all such project needs have been satisfied through normal hours of quarry  
23 operations.

24       • The Decision errs in finding that adjoining and nearby property owners opposed  
25 Petitioner’s special use permit in 2021 and remain opposed to the Proposal for many of

1 the same reasons. *Id.* p. 29 (Finding 14). This determination is not supported by  
2 substantial evidence and it is contrary to the law. Some but not all neighbors opposed the  
3 Petitioner’s 2021 special use permit and some but not all neighbors oppose the Proposal,  
4 for varying reasons. Further, opposition and expression of concerns or fears is not  
5 tantamount to actual impacts, and substantial evidence in the record does not support a  
6 finding that the Proposal would adversely quiet enjoyment of neighboring residential  
7 properties. To the contrary, extensive evidence in the record demonstrates there will be no  
8 such impacts necessitating additional limits under LCC 17.142.210(2)(h).

9 • For the same reasons as set forth directly above, Finding 15 of the Decision is not  
10 supported by substantial evidence and is contrary to the law. *Id.* p. 29 (Finding 15).

11 • The Decision states that 25 comment letters were submitted generally in  
12 opposition to the Proposal, but the Decision errs by failing to evaluate whether, beyond  
13 expressing mere opposition, concerns, or fears with the Proposal, substantial evidence  
14 demonstrates that the Proposal would in fact impair the quiet enjoyment of nearby  
15 residential properties. *Id.* p. 29 (Finding 17). As such, Finding 17 is not supported by  
16 substantial evidence, undermined by extensive countervailing evidence, and contrary to  
17 the law.

18 • The Decision errs in determining that there has been no substantial change in  
19 circumstances surrounding Good’s Quarry since 2021 and there remains a need to protect  
20 surrounding property owners through restrictions on the operations hours. *Id.* p. 31  
21 (Finding 27). This determination is not supported by substantial evidence, undermined by  
22 extensive countervailing evidence, and contrary to the law. “Substantial change in  
23 circumstances” is not an applicable approval criterion, and even if it were, it would be  
24 satisfied. Further, substantial evidence does not support the finding that the Proposal  
25 would impair the quiet enjoyment of neighboring residential properties or that additional

1 limits beyond those set forth in LCC 17.142.210(h) are necessary.

2 • While the office of the Lewis County Hearing Examiner generally has jurisdiction  
3 over Type III special use permit revision applications, as stated in Conclusion 1, the  
4 Hearing Examiner lacks jurisdiction to evaluate such applications based on criteria outside  
5 of the Lewis County Code, such as res judicata. The Decision is in excess of the Hearing  
6 Examiner’s jurisdiction contrary to the law in evaluating the Proposal against such  
7 criteria. *Id.* p. 31 (Conclusion 1).

8 • The Decision errs in incorporating by reference all conclusions of law contained in  
9 the conclusions of law for SUP19-0002. *Id.* (Conclusion 3). The conclusions of law in  
10 SUP19-0002 are specific to that proceeding, and it is contrary to the law for the Decision  
11 to incorporate such conclusions here.

12 • While processing and loadout are included within the many activities that Good’s  
13 Quarry conducts as part of its regular operations, these limited activities do not constitute  
14 regular operations. Conclusion 6 is not supported by substantial evidence and contrary to  
15 the law to the extent it determines otherwise. *Id.* (Conclusion 6).

16 • The Decision errs in determining that Petitioner’s request to extend processing and  
17 loadout of customer trucks to 10:00 p.m. and to undertake nighttime loadout of customer  
18 trucks from 10:00 p.m. to 7:00 a.m. expressly conflicts with LCC 17.142.210(2)(h) is not  
19 supported by substantial evidence and contrary to the law. *Id.* p. 32 (Conclusion 8). These  
20 limited activities, as set forth and conditioned in the Proposal, do not conflict with regular  
21 hours of operation as allowed in LCC 17.142.210(2)(h).

22 • The Decision errs in determining that res judicata applies to the Proposal, that  
23 Lewis County has not enacted any ordinances that “remove” special use permits from  
24 application of res judicata, and that res judicata continues to apply despite LCC  
25 17.05.140(4). *Id.* (Conclusions 9, 10, and 11). These determinations are contrary to the

1 law. The County Code contains processes and standards for review of the Proposal  
2 (including but not limited to LCC 17.05.140(4)), which do not contain res judicata. The  
3 County Code need not “remove” res judicata as the Decision erroneously asserts. The  
4 Decision commits legal error and exceeds the jurisdiction of the Hearing Examiner in  
5 analyzing the Proposal against res judicata.

6 • The Decision errs in determining that res judicata requires Petitioner to  
7 demonstrate a substantial change in circumstances since the 2021 special use permit for  
8 Good’s Quarry was issued, that Petitioner’s desire to increase the intensity of the existing  
9 land use is not a substantial change in circumstances, and that Petitioner has not  
10 demonstrated a substantial change in circumstances. *Id.* (Conclusions 12, 13, and 14).  
11 These determinations are not supported by substantial evidence and are contrary to the  
12 law. Res judicata does not apply. Even if it did, it would permit a second application if, as  
13 is the case here, there is a substantial change in the second application compared to the  
14 first. There are also substantial changes in the Proposal compared to the prior proposal,  
15 including knowledge of fully functional surface mines that are subject to similar hours  
16 restrictions as Good’s Quarry and the feasibility of Condition 23 as set forth in the 2021  
17 permit decision.

18 • The Decision errs in determining the current restriction on days and hours of  
19 operation are necessary to protect the quiet enjoyment of neighboring residential  
20 properties. *Id.* (Conclusion 15). The determination is not supported by substantial  
21 evidence and it is contrary to the law. It is based on mere comments expressing  
22 opposition, concerns, or fear over the Proposal. These comments do not contain  
23 substantial evidence demonstrating that the Proposal, as carefully designed and  
24 conditioned, would impair the quiet enjoyment of neighboring residential properties. To  
25 the contrary, extensive record evidence demonstrates otherwise. This evidence is

1 reinforced by the Proposal's DNS, which conclusively determines that the Proposal will  
2 have no significant adverse environmental impacts. It is also consistent with the long  
3 history of operations at Good's Quarry prior to 2021, when there were no days and hours  
4 restrictions and no comments or complaints were submitted by neighboring residential  
5 property owners stating that evening, nighttime, and weekend operations disrupted their  
6 quiet enjoyment.

7 • The Decision correctly determines that good cause exists for revising Condition  
8 23, but it errs in determining that the limited revisions recommended in Community  
9 Development's compromise amendment are necessary and should be approved. *Id.* p. 33  
10 (Conclusions 16 and 17). For reasons set forth above, this latter determination is not  
11 supported by substantial evidence and is contrary to the law.

12 • The Decision errs in partially denying and partially granting the Proposal as set  
13 forth in the DECISION portion of the Decision. *Id.* pp. 33-34. For reasons set forth above,  
14 this decision is not supported by substantial evidence, is contrary to the law, and is in  
15 excess of the Hearing Examiner's jurisdiction (insofar as the Hearing Examiner relied on  
16 res judicata in reaching the Decision). The Decision should have granted the Proposal as  
17 presented in Petitioner's application.

18 • The Hearing Examiner erred in denying Petitioner's motion for reassignment. The  
19 mother of one of Hearing Examiner Scheibmeir's best friends from law school resides  
20 near Good's Quarry and opposes the Proposal, requiring reassignment of this matter under  
21 the appearance of fairness doctrine. The Hearing Examiner's refusal to reassign this  
22 matter to a different Hearing Examiner violates the appearance of fairness doctrine and  
23 LCC 2.25.070(2).

1           **4. Name, Mailing Address, Daytime Telephone Number of Petitioner, and**  
2           **Signature of Petitioner's Attorney.**

3           Good Crushing, Inc.  
4           265 Rupp Road  
5           Toledo, WA 98591  
6           Phone: (360) 864-2974  
7           See below for signature of Petitioner's attorney.

8           **5. Name, Mailing Address, Daytime Telephone Number, and Signature of**  
9           **Petitioner's Attorney.**

10           

11           Jesse DeNike, WSBA #39526  
12           Attorney for Petitioner Good Crushing, Inc.  
13           1218 Third Ave Ste. 2000  
14           Seattle, WA 98101  
15           Phone: (206) 588-4188

16           **6. Filing Fee.**

17           The required filing fee is being paid contemporaneous with the filing of this  
18           petition. Petitioner is prepared to pay additional costs upon request as may be required  
19           pursuant to LCC 2.25.130.

20           RESPECTFULLY SUBMITTED this 3rd day of April, 2026.

21           PLAUCHÉ & CARR LLP

22           By: s/Jesse DeNike

23           Jesse DeNike, WSBA #39526  
24           Attorney for Good Crushing, Inc.  
25           1218 Third Ave Ste 2000  
              Seattle, WA 98101  
              T: (206) 588-4188  
              F: (206) 588-4255  
              E-mail: jesse@plauchecarr.com

# **Exhibit A**

BEFORE THE LEWIS COUNTY HEARINGS EXAMINER

2	IN RE:	)	HEARING NO. SUP25-0001 and
3	GOOD CRUSHING, INC.,	)	PUBLIC HEARING NO. 26-2-001
4	Applicant.	)	FINDINGS OF FACT,
		)	CONCLUSIONS OF LAW
		)	AND DECISION

5 **APPLICANT:** Good Crushing, Inc.  
6 265 Rupp Road  
7 Toledo, Washington 98591

8 **REPRESENTATIVE:** Erick Staley  
9 Fulcrum GeoResources, LLC  
10 17600 Pacific Highway, Unit 357  
11 Marylhurst, Oregon 97036

12 **ATTORNEY:** Jesse DeNike  
13 Plauche & Carr, LLP  
14 1218 Third Avenue, Suite 2000  
15 Seattle, Washington 98101

14 **NATURE OF REQUEST:**

15 The Applicant, Good Crushing, Inc., seeks amendment of Condition No. 23 contained in Special  
16 Use Permit SUP19-0002 in order to increase the hours of mining operation for processing rock  
17 and hauling offsite. Other conditions found in SUP19-0002, including limitations on blasting,  
18 are not proposed to be changed.

18 **SUMMARY OF DECISION:**

19 The requested amendment to Condition No. 23 found in SUP19-0002 is **partially denied** with  
20 respect to the Applicant's request to increase hours of normal operation, and **partially granted** to  
21 provide clarification on allowed operations for emergencies and/or public projects requiring  
22 expedited delivery of rock materials.

22 **BACKGROUND**

23 [NOTE: Much of the following Background is taken from the Findings of Fact and  
24 Conclusions of Law for Hearing No. SUP19-0002 (as corrected) dated May 18, 2021 (hereinafter  
25 "SUP19-0002").]

1 The current Good's Quarry is a combination of two earlier, stand-alone quarries: The  
2 original "Good Quarry", located at 299 Tennessee Road north of Winlock at a site slightly west  
3 of Tennessee Road and south of the terminus of Rayburn Road, and the "Johnson Quarry",  
4 located due south of the Good Quarry and just north of Hale Road. In 1997, the then owner of  
5 the Good Quarry, Jason Good, was approved for a State surface mining permit for the mining of  
6 32 acres. Mr. Good's application preceded Lewis County's enactment of an ordinance regulating  
7 surface mining through the Special Use Permit process, established in 2000. Nonetheless, Mr.  
8 Good agreed under protest to comply with the County's request to submit an application for a  
9 Special Use Permit. That application proceeded to a public hearing and resulted in the approval  
10 of the requested Special Use Permit despite the protest of a number of adjoining landowners, but  
11 subject to several conditions including limits on hours of operation. That Decision was  
12 ultimately appealed to the State Court of Appeals which determined that Mr. Good's surface  
13 mine vested prior to the County's ordinance and therefore did not require a Special Use Permit.  
14 Nonetheless, the quarry, which subsequently was transferred from Jason Good to his father, Alan  
15 Good, operated under the conditions imposed by the Permit.

16 Meanwhile, the Johnson Quarry predated the County's special use permitting process and,  
17 like the Good Quarry, was operating under a State Surface Mining Permit. Its ownership and  
18 operations were independent of Good Quarry.

19 In 2019, Alan Good applied for a Special Use Permit to expand the Good Quarry south to  
20 the Johnson Quarry, creating one contiguous quarry covering 141.8 acres and collectively  
21 referred to as Good's Quarry. This included expansion of mining operations into the 95.8 acres  
22 located between the two quarries and the elimination of the farm that had previously separated  
23 them.

1 During the public hearing for the requested Special Use Permit, Mr. Good declared that:  
2 "It is not his intent to increase the intensity of mining operations but rather to maintain the steady  
3 supply of rock for years to come." (SUP19-0002 at page 2, line 21). Surrounding property  
4 owners challenged the requested permit, both through written comments and oral testimony, and  
5 complained about its dust, noise, vibration and other adverse effects on them personally and to  
6 their property including their wells. These same concerns were also expressed in the earlier 2000  
7 hearing. (SUP19-0002 at page 3, lines 3-6).

8 One of the many issues needing to be addressed as part of SUP19-0002 was allowed  
9 hours of operation. The County Planner, Karen Witherspoon, noted that the Applicant's website  
10 revealed that its announced hours of operation were from 7:30 a.m. to 3:30 p.m., Monday  
11 through Friday, and with no operations on Saturdays and Sundays. (SUP19-0002 at page 25, line  
12 20). Lewis County Staff recommended that the Special Use Permit be granted subject to a  
13 condition that hours of operation be limited to 6:30 a.m. to 7:00 p.m., Monday through Friday,  
14 with no activities occurring on weekends. (SUP19-0002 at page 26, line 1). Mr. Good  
15 responded by proposing hours of operation from 6:30 a.m. to 7:00 p.m. and that he be allowed to  
16 operate on weekends as well. (SUP19-0002 at page 26, line 4). After considering both parties'  
17 suggestions and after hearing all public comment, the Hearing Examiner declared:

18 "78. The Hearing Examiner deems it necessary to protect the quiet enjoyment  
19 of neighboring residential properties through hours and days of operation that are  
20 consistent with those imposed on other recent surface mines by limiting this  
21 mine's operation to 7:00 a.m. to 5:00 p.m., Monday through Friday, during  
daylight hours only and with provisions for special operations if deemed  
necessary for an emergency."

22 Mr. Good did not challenge this Finding.

23 Use of the mine for public emergencies and other critical public works projects was  
24 addressed by the Hearing Examiner's condition that "authorization from Lewis County  
25

1 Community Development is required for hours of operation exceptions to these regular hours  
2 when the quarry will have limited evening or weekend work that may be required by the need for  
3 reduced traffic on public projects or to provide emergency response." Again, Mr. Good did not  
4 challenge this condition.

5 The mining regulations (LCC 17.142.020(2)(d)) required Findings that the project "will  
6 not be detrimental to any persons, property or the general welfare by reasons of excessive  
7 production of traffic, noise, smoke, fumes, glare or odors." The Hearing Examiner expressly  
8 found that reducing hours of operation would assist in satisfying this requirement. (SUP19-0002  
9 at page 14, line 15). Mr. Good did not challenge this Finding.

10 Slightly less than five years later, Mr. Good asks to amend Condition No. 23 as follows:

11 "1. To allow daytime processing and loadout of customer trucks up to 7 days  
12 per week, 7:00 a.m. to 10:00 p.m., with loadout limited to 20 loads per hour.

13 2. To allow nighttime loadout of customer trucks up to 7 days per week from  
14 10:00 p.m. to 7:00 a.m., with loadout limited to 8 loads per hour."

15 As noted in the Applicant's Narrative (Exhibit 1) as well as its written opening statement  
16 (Exhibit 23), the Applicant does not intend for this to be a "24/7" operation but, instead, that the  
17 proposed weekend and nighttime operations would be limited to an "as needed" basis.

18 The Applicant does not propose any changes to the current limitations on hours of  
19 blasting.

### 20 PUBLIC HEARING

21 The public hearing commenced at 9:00 a.m. on Wednesday, March 11, 2026. The  
22 hearing occurred in a hybrid format allowing for both in-person testimony as well as remote  
23 testimony utilizing the Zoom platform with County Staff serving as the host. The County  
24 appeared through Karen Witherspoon, Senior Planner, and was represented by Karin Phomma,  
25 of the Lewis County Prosecuting Attorney's Office. The Applicant, Good Crushing, Inc./Alan

1 Good, appeared through Mr. Good as well as his engineer, Eric Staley, and was represented by  
2 Jesse DeNike. A large crowd attended in person with many others attending remotely.  
3 Testimony was received from Karen Witherspoon on behalf of the County and from Eric Staley  
4 on behalf of the Applicant. Eleven members of the public testified including the following:  
5 Mike Porter, Christel Field, Megan Odlin, Anya Klemmons, Kathleen Heikkala, Vanessa  
6 Kupietz, Dorothy Smith Walters, Tami Welch, Megan Cooney, Shirley Lewis, and Tamara  
7 Clark. A verbatim recording was made of the public hearing and all testimony was taken under  
8 oath.

9 Exhibits considered during the hearing included the following:

10 Exhibit 1 Subheading – “Application Documents” on the webpage, which include  
11 eleven documents:

12 [https://lewiscountywa.gov/departments/community-development/current-](https://lewiscountywa.gov/departments/community-development/current-planning-applications/sup25-0001-good-crushing/)  
13 [planning-applications/sup25-0001-good-crushing/](https://lewiscountywa.gov/departments/community-development/current-planning-applications/sup25-0001-good-crushing/)

14 Exhibit 2 Complete Application Review Letter

15 Exhibit 3 Notice of Application – Affidavit of Publication

16 Exhibit 4 Notice of Application – Affidavit of Mailing

17 Exhibit 5 Notice of Application – Affidavit of Posting

18 Exhibit 6 Subheading “Public Comments Submitted During SEPA and Notice of  
19 Application” three document files *SUP25-0001 All NOA SEPA Comments,*  
20 *TIA Outline Exhibit and SUP25-0001/SEP25-0011 NOA Complete* –  
21 *Request for Response* on the webpage:

22 [https://lewiscountywa.gov/departments/community-development/current-](https://lewiscountywa.gov/departments/community-development/current-planning-applications/sup25-0001-good-crushing/)  
23 [planning-applications/sup25-0001-good-crushing/](https://lewiscountywa.gov/departments/community-development/current-planning-applications/sup25-0001-good-crushing/)

24 Exhibit 7 Letter from Hearing Examiner – setting hearing date and time

25 Exhibit 8 Notice of Public Hearing - Affidavit of Publication

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- Exhibit 9 Notice of Public Hearing - Affidavit of Mailing
- Exhibit 10 Notice of Public Hearing - Affidavit of Posting
- Exhibit 11 Screen shot of the County GIS layer showing current zoning designations of the subject parcels and surrounding area
- Exhibit 12 Screen shots of County GIS layer showing 2019, 2021 and 2024 Aerial Photos of the subject parcels and surrounding area (5 pages)
- Exhibit 13 Subheading "Applicant Response to Comments" on the webpage containing three documents:  
<https://lewiscountywa.gov/departments/community-development/current-planning-applications/sup25-0001-good-crushing/>
- Exhibit 14 SEPA Threshold Determination - DNS (SEP25-0011) – Affidavit of Publication
- Exhibit 15 New Berm Location Figure A and Previous Mine Areas Figure B
- Exhibit 16 2024 Aerial Photo – Winston Quarry Surrounding Area
- Exhibit 17 SUP19-0002 Original Staff Report's Exhibit 25 – Quarter Mile Owners
- 18 Blank
- Exhibit 19 Staff Report
- Exhibit 20 Supplemental Staff Report
- Exhibit 21 Applicant's PowerPoint Presentation
- Exhibit 22 Declaration of Kathleen Heikkala
- Exhibit 23 Written Opening Statement of the Applicant's Legal Counsel

No other exhibits were submitted during the hearing.

1           **County's Presentation.**

2           The hearing began with the testimony of Karen Witherspoon, Senior Planner and author  
3 of the County's Staff Report (Exhibit 19) and Supplemental Report (Exhibit 20). Ms.  
4 Witherspoon's testimony was relatively brief and relied instead on her lengthy Staff Report. She  
5 explained that the matter comes before the Hearing Examiner solely to consider the Applicant's  
6 request to amend Condition No. 23 of the current Special Use Permit. This condition restricts  
7 regular hours of operation from 7:00 a.m. to 5:00 p.m., Monday through Friday during daylight  
8 hours only. No weekend operations are permitted. Additional provisions are made for increased  
9 operations to address any special public projects or declared emergencies. The Applicant  
10 proposes to amend this condition to provide the following:

11           1.       To allow daytime processing and loadout of customer trucks up to seven days per  
12 week, 7:00 a.m. to 10:00 p.m. but with loadout limited to twenty loads per hour.

13           2.       To allow nighttime loadout of customer trucks up to seven days per week from  
14 10:00 p.m. to 7:00 a.m., but with loadout limited to eight loads per hour.

15           Ms. Witherspoon then provided a brief summary of the history of the Good's Quarry  
16 similar with what is set forth in the Background Section. In 2021, the "Good Quarry" and the  
17 "Johnson Quarry" were combined into a single, larger quarry by Special Use Permit SUP19-  
18 0002. The Special Use Permit combined the two mines and also approved mining of the 95.8  
19 acres located between them allowing for a total mining operation covering 141.8 acres. The  
20 current Permit allows for soil and rock extraction, blasting, crushing, stockpiling, and loading. It  
21 recognizes existing facilities include a sales yard, scales, night watchman trailer, crushing and  
22 processing facilities, and commercial access. The requested amendment does not alter any of  
23 these operations or facilities. Similarly, the requested amendment does not seek to revise the  
24 current limits on blasting. Again, the only requested change is to hours and days of operation.

1 Most of the mine has a zoning designation of Rural Development District 20 Acre  
2 (RDD-20) but a small portion in the south is zoned Mineral Resource Lands (MRL/Mine), while  
3 the access road into the site has a zoning designation of Rural Development District 10 (RDD-  
4 10).

5 Adjoining lands to the north and southwest are zoned RDD-20; to the west are zoned  
6 MRL/Mine; to the east are zoned RDD-10; and to the south are a mix of zoning designations  
7 including RDD-20, MRL/Mine, RDD-10 and Local Forest Resource Lands - 20 Acre (FRL-LI).  
8 Surrounding uses include some commercial timber activity to the west and northwest while most  
9 remaining nearby properties are rural residential properties ranging in size from 2 to 10 acres. A  
10 sawmill and log storage yard are located approximately a quarter mile to the east. The Hale  
11 Road Quarry, owned by the County, is located south of the project site.

12 Access to the mine is from a gated and paved access road leading to Tennessee Road.  
13 The application materials acknowledge that the proposed amendment would increase the total  
14 number of truck trips per day using this access (Exhibit 1):

15 "The site currently experiences a maximum of 20 truckloads per hour (40 one-  
16 way truck trips per hour). The proposed expansion of operating hours would not  
17 result in an increase in hourly trips but would increase the duration of this traffic  
18 volume per day, extending potentially from 7:00 a.m. to 10:00 p.m. at a maximum  
19 of 20 loads (40 one way trips) per hour. Proposed nighttime loadout would be  
20 limited to 8 loads (16 one way trips) per hour between 10:00 p.m. and 7:00 a.m.  
The total maximum loads for Good's Quarry per the current SUP19-0002  
operational limits (7:00 a.m. to 5:00 p.m.) is 200 loads (400 one way trips) per  
day. *The proposed expanded hours would result in an additional maximum of  
172 loads (344 one way trips) per day.*" (Emphasis added)

21 Stated slightly differently, the proposed amendment, if granted, would potentially  
22 increase the maximum allowed daily loads from 200 loads (400 one way trips) to 372 loads (744  
23 one way trips) per day, or not quite double the current maximum loads per day.  
24

1 Notice of the requested amendment was sent to surrounding property owners, resulting in  
2 25 public comment letters (Exhibit 6). Public comments were generally in opposition and  
3 reflected the same concerns as were expressed during the 2021 hearing as well as the even earlier  
4 hearing in 2000.

5 The application underwent SEPA review and the County issued a SEPA Determination of  
6 Non-Significance (DNS) on May 28, 2025 (Exhibit 14). The SEPA Determination was not  
7 appealed, was retained, and is now final.

8 Ms. Witherspoon's Staff Report includes a lengthy discussion of sound-related issues. As  
9 explained in her report beginning at page 10, the Applicant arranged for a Sound Analysis by  
10 Kaufman Engineers. This analysis concludes that processing in the northern site area (as  
11 presently allowed) will not result in any noise levels above the thresholds established under  
12 WAC 173-60. This includes operations during the hours of 7:00 a.m. to 7:00 p.m., seven days a  
13 week. The analysis also concludes that loading of customer trucks and hauling offsite during  
14 daytime hours of 7:00 a.m. to 10:00 p.m., seven days a week, could continue for up to 20 loads  
15 per hour without exceeding noise thresholds. The analysis recommends, however, that during  
16 nighttime hours (10:00 p.m. to 7:00 a.m.) loading should be limited to 8 loads per hour in order  
17 to ensure compliance with noise limits. The Sound Analysis separately notes that future mining  
18 in currently unmined areas of the pit (Area M-3) will likely exceed noise thresholds. The  
19 analysis recommends that prior to commencing mining in Area M-3, berms be constructed at the  
20 north boundary of the area as well as the east boundary of Area M-1, with the height of the  
21 berms being 15 feet. Staff recommends that if current Condition No. 23 is amended, its  
22 amendment should be conditioned upon the Applicant constructing the recommended berms  
23 adjacent to Area M-3 and Area M-1 as identified on Exhibit 15, Figure A, found at page 12 of  
24 the Staff Report.

1 Ms. Witherspoon then turned to the Applicant's requested conditions and the County's  
2 response. As explained more fully in the Staff Report, County Staff do not support the  
3 Applicant's request to amend the normal hours of operation, or the allowed days of operation.  
4 To the contrary, Staff recommends that the normal hours of operation be kept as is.

5 County Staff does, however, recommend a "compromise" amendment to better address  
6 the need for operations during public emergencies or for public works contracts requiring the  
7 delivery of rock outside of regular hours. Staff recommends that Condition No. 23 be revised as  
8 follows:

9 "The regular hours of operation for the mine operation, except for blasting  
10 activities, are limited to 7:00 a.m. to 5:00 p.m., Monday through Friday, but  
11 during daylight hours only. Temporary extensions to regular hours of operation  
12 for processing and loadout of customer trucks during either a declared emergency  
13 event or for documented public works contracts requiring work outside regular  
14 hours is authorized as follows:

15 ■ In either situation (a declared emergency exists or for documented public  
16 works contracts requiring work outside regular hours) the total extended hours  
17 **shall not exceed six consecutive months within a calendar year.**

18 ■ During a temporary extension for a **declared emergency** requiring work  
19 outside regular hours:

20 • the extended hours for daytime processing and loadout of customer trucks  
21 – up to 7 days per week, 7:00 am to 8:00 pm. Loadout will be limited to 20 loads  
22 per hour.

23 • the extended hours for evening/nighttime loadout of customer trucks – up to  
24 7 days per week, 8:00 pm to 7:00 am. Loadout will be limited to 4 loads per hour.

25 ■ During a temporary extension for **documented public works contracts**  
requiring work outside regular hours:

• the extended hours for daytime processing and loadout of customer trucks –  
up to 6 days per week (Monday – Saturday), 7:00 am to 8:00 pm. Loadout will be  
limited to 20 loads per hour.

• No processing and/or loadout of customer trucks is authorized between the  
hours of 8:00 pm and 7:00 am at any time for this type of temporary extension to  
regular hours.

■ Temporary extension to regular hours of operations does not apply to  
active mining of the mine's workface and blasting operations. Those activities  
will remain as conditioned in in the underlying permit (SUP19-0002).

1           ▪       The operator shall provide notice to the County and to the property owners  
2       within a quarter mile (1,320 feet) of all mine property lines as shown in Exhibit  
3       25 of the original special use permit SUP19-0002 (provided here as Exhibit 17) at  
4       least 48 hours before any such temporary extension begins. The notice shall  
5       include identification of the specific extended operating hours, the duration of the  
6       extended hours and a statement for which reason (declared emergency event or  
7       for a documented public works contract requiring work outside regular hours) the  
8       extension is used. Notification to the public shall be provided in one or more of  
9       the following methods: in-person, by phone call (including text) or by email.  
10       Notification to Lewis County Community Development shall be sent by email.  
11       Additional methods of notification may be used by the Applicant.

12           ▪       During all operations under extended hours, the operator shall maintain  
13       daily logs of load counts and hours of operation and shall submit an annual  
14       monitoring report showing compliance with this Condition of Approval to the  
15       Lewis County Community Development Department by January 31st of each year  
16       for all operations under extended hours conducted from January 1st to December  
17       31st of the previous calendar year.

18           ▪       Mobile equipment (heavy equipment, trucks, etc.) shall be fitted with  
19       broadband or other non-tonal backup alarms to minimize noise impacts to protect  
20       the quiet enjoyment of neighboring residential properties."

21           As proposed by County Staff, Condition No. 23 would continue to limit normal  
22       operations from 7:00 a.m. to 5:00 p.m., Monday through Friday, with no weekend operations. In  
23       the event of a declared public emergency, hours could be extended from 7:00 a.m. to 8:00 p.m.,  
24       seven days per week, but with loadout limited to 20 loads per hour, and for evening/nighttime  
25       loadout up to seven days per week from 8:00 p.m. to 7:00 a.m. but limited to four loads per hour.  
In the event of a documented public works contract requiring work outside of regular hours,  
operations would be allowed to be extended to six days per week (Monday through Saturday)  
from 7:00 a.m. to 8:00 p.m. but with loadout again limited to 20 loads per hour. No evening or  
nighttime work would be authorized. In return, the Applicant would be required to provide  
notice to the County and property owners within one-quarter mile with at least 48 hours notice of  
any special operations. The notice would include specific extended operating hours; the duration  
of the extension; and the basis for the special operations. In addition, the Applicant

1 would be required to maintain daily logs of load counts and hours of operation during all  
2 extended hours and submit this information annually to the County. Finally, the Applicant would  
3 be required to fit all equipment with broadband or other non-tonal backup alarms in order to  
4 minimize noise impacts to adjoining properties.

5 At the conclusion of Ms. Witherspoon's direct testimony the Hearing Examiner posed a  
6 series of questions to better determine whether there had been substantial changes in  
7 circumstances in the operation of the mine since the Special Use Permit was approved in 2021:

8 • **Mining Regulations.** The Hearing Examiner inquired as to whether the County's  
9 mining regulations (LCC 17.142.210) had been significantly altered. Ms. Witherspoon  
10 explained that some small changes had occurred: In 2021, the mining regulations  
11 were codified at LCC 17.142.200 but are now found at LCC 17.142.210. The only substantive  
12 change to the mining regulations is that emergency operations are limited to six months per year.  
13 Apart from this change, the limits on days and hours of operation remain the same. No other  
14 substantive change has occurred to LCC 17.142.120.

15 • **Special Use Permits.** No significant changes have occurred in the County's  
16 Special Use Permit regulations, especially with respect to mining operations.

17 • **Zoning Designations.** The zoning designations of the project site and all  
18 surrounding properties have remained unchanged.

19 • **Comprehensive Plan.** The Comprehensive Plan was updated in 2025 with a new  
20 land use designation map but the subject property and all surrounding properties have retained  
21 their previous land use designations.

22 • **Other Mining Facilities.** No new mining facilities have been approved since  
23 2021.

1           ●       **Approved Hours of Other Mining Facilities.** Since 2021 no other permitted  
2 mining facilities have sought to amend their approved hours of operation.

3           ●       **Emergency Declarations.** There have been no declared emergencies by Lewis  
4 County.

5           ●       **Fulfilling Public Works Contracts.** Lewis County Public Works reports that it  
6 has not had any difficulty obtaining necessary rock for its public works contracts through normal  
7 working hours, and that it has not had need to request special hours of operation to fulfill its  
8 public works projects.

9           ●       **Request for Special Needs by Other Public Works Agencies.** No other nearby  
10 jurisdictions have declared any emergencies. No public works agencies have sought permission  
11 for special hours of operation to fulfill public works projects with the possible exception of BPA.  
12 Ms. Witherspoon explained that the Applicant notified her that BPA was seeking permission for  
13 special operations in order to provide rock on short notice to repair one or more tower pads. In  
14 response, Ms. Witherspoon asked for additional information as to the nature of the emergency  
15 but the Applicant failed to provide her with any additional information and the matter was not  
16 pursued.

17           ●       **Surrounding Land Uses.** Since 2021 none of the surrounding or nearby  
18 properties have experienced a change in use and the surrounding area continues with its historic  
19 mix of mostly rural and forest land uses.

20           ●       **Other Substantial Changes in Circumstances.** Ms. Witherspoon was asked if  
21 she could identify any substantial change in circumstances relating to the operation of the Good's  
22 Quarry since 2021. Ms. Witherspoon replied that she is unable to identify any substantial change  
23 in the circumstances surrounding its operations.

1           **Applicant's Presentation.**

2           The Applicant's only witness was its project engineer, Eric Staley. Similar to Ms.  
3 Witherspoon's testimony, Mr. Staley's testimony was relatively brief and relied heavily upon the  
4 Applicant's PowerPoint presentation (Exhibit 21) along with the Applicant's written Narratives in  
5 support of its applications (see "Application Documents") and the Public Hearing Documents  
6 together with Exhibit 23. With the aid of these materials Mr. Staley addressed the following  
7 issues:

8           •       **Scope of Requested Amendment.** The Applicant wishes to emphasize that it is  
9 not seeking "24/7" operations. Instead, it is asking to amend the hours of operation to allow  
10 *limited* operations during nighttime hours of 10:00 p.m. to 7:00 a.m., including weekends, for  
11 "loadout only", and with operations limited to eight loads per hour.

12           "Processing" of rock (crushing, sorting, loading) would occur from 7:00 a.m. to 10:00  
13 p.m. daily, including weekends, "as needed", but limited to twenty loads per hour.

14           All other work, including drilling and work face activities, would continue to operate  
15 during the currently approved hours of 7:00 a.m. to 5:00 p.m, Monday through Friday.

16           There would be no change in the hours of blasting.

17           •       **Supporting Sound and Traffic Testing and SEPA DNS.** Mr. Staley  
18 emphasized that the Applicant's requested change in hours operation is supported by recent  
19 sound testing (Exhibit 1) which demonstrates that increased operations will not cause sound  
20 levels to rise above established levels so long as certain limits are imposed on the number of  
21 loads allowed per hour, especially during nighttime operations. Similarly, a recent Traffic Impact  
22 Analysis ("TIA") (Exhibit 1) demonstrates that the proposed increased operations will not result  
23 in unusual burdens to the surrounding roads. Finally, Mr. Staley stressed that the project has  
24 undergone SEPA review by the County resulting in a Determination of Non-Significance.

1           •       **Comparison to Other Approved Special Use Permits for Mining.** Much of the  
2 Applicant's presentation focuses on its position that the current limits on operations are greater  
3 than those imposed on other mining facilities, with the net result being an "uneven playing field".  
4 The Applicant's materials divide this analysis into two subsections: (1) other mining operations  
5 operating under a Special Use Permit, and (2) other mining operations which predate the Special  
6 Use Permit process.

7           As part of the 2021 permit approval, the Hearing Examiner noted that four other mining  
8 operations had been granted Special Use Permits since the County enacted its mining regulations  
9 in about 2000: The Winston Quarry located east of Lake Mayfield; the Cowlitz Ridge Quarry  
10 southwest of Mossyrock; the Herbrand Quarry near Randle; and the JL Storedahl Quarry west of  
11 Adna. The Hearing Examiner noted that each of these previous Special Use Permits had  
12 restricted hours of operation, generally from 7:00 a.m. to 5:00 p.m., Monday through Friday (see  
13 attachment to Findings and Conclusions for SUP19-0002). Mr. Staley explained that, of these  
14 four other permitted quarries, the JL Storedahl Quarry was never opened, while the Cowlitz  
15 Ridge and Herbrand Quarries have little or no operations, leaving only the Winston Creek  
16 Quarry as a similar basalt quarry operating under a Special Use Permit. Mr. Staley then noted  
17 that the Special Use Permit for the Winston Creek Quarry, originally issued in 2006, was  
18 amended in 2011 to be allowed to operate during extended hours as follows:

19           "Operations are hereby permitted twenty-four (24) hours per day seven (7) days  
20 per week on an as needed basis upon twenty-four (24) hours written notice to all  
21 properties within 500 feet of the subject site. The applicant shall also provide  
22 twenty-four (24) hour written notice and explanation to Lewis County  
23 Community Development. The applicant shall include in the written notification  
24 the estimated times when the operations will be outside the original 7:00 a.m. to  
25 5:00 p.m. schedule. The Applicant shall try not to operate before 9:00 a.m. and

1 beyond 5:00 p.m. on weekends. There shall be no blasting of rock on weekends  
2 or time outside the original operation times." (In Re Winston Quarry, Inc.,  
3 Hearing No. 06-6-003 Amendment Dated March 2, 2011).<sup>1</sup>

4 Mr. Staley did not testify whether the Winston Creek Quarry has ever operated during  
5 these allowed extended hours. Mr. Staley asserts that the Applicant should be given the same  
6 opportunity as Winston Creek to operate during extended hours "as needed".

7 • **Comparison to Other Mining Operations Pre-Dating the Special Use**

8 **Permitting Process.** Mr. Staley then examined the allowed hours of operation of older mining  
9 operations that began prior to the County imposing Special Use Permits for mines. His analysis  
10 included two older basalt quarries, the "Alderbrook Quarry" and the "Brown Quarry" both  
11 located near Adna, along with three gravel operations: the "L-Rock Pit" and the "Mandy Road  
12 Pit", both located near Toledo, and the "Sterling Breen Pit" north of Centralia. Mr. Staley  
13 pointed out that the Alderbrook and Brown Quarries do not have any restrictions on hours of  
14 operation. The same is true of the L-Rock Pit. The Mandy Road Pit had its hours of operation  
15 restricted in return for its approved expansion (Hearing No. 09-6-001), limiting its hours to 7:00  
16 a.m. to 7:00 p.m. Similarly, in 2011 the Sterling Breen Pit was approved to operate from 7:30  
17 a.m. to 5:30 p.m., as part of an approved expansion (SUP11-6-001).<sup>2</sup> Mr. Staley asserts  
18 competing facilities either have no restrictions on days and hours of operation or have more  
19 flexible limits, including weekend operations.

20 \_\_\_\_\_  
21 <sup>1</sup> The approved Amendment was issued by a Hearing Examiner Pro Tem

22 <sup>2</sup> Importantly, however, a later approved expansion in 2017 restricted operations to 7:00 a.m. to 4:00 p.m., Monday  
23 through Friday, with no weekend operations (SUP17-6-003). Its hours have remained the same since.  
24  
25

1 Mr. Staley also pointed out that these various other mining operations have similar  
2 zoning designations and are supported by similar adjoining uses. He argues that there is no good  
3 policy reason for imposing more significant restrictions on the Applicant's operations than on its  
4 competitors, and that fairness dictates that the Applicant be allowed the same opportunity as  
5 other mining operations.

6 • **Special Operations.** Mr. Staley also testified to the Applicant's frustration with  
7 the County's proposed limits on special operations during public emergencies or other special  
8 public works needs. Unfortunately, Mr. Staley's testimony was largely based on hearsay  
9 information and lacked any first hand knowledge. For example, he described a situation where  
10 BPA had inquired into the quarry providing rock on short notice and suggested that the County  
11 had failed to respond to this request in a timely fashion but then acknowledged that he was not  
12 involved in the project and could not confirm any of these facts (and Mr. Good did not testify).  
13 Thus, the only first hand information regarding this event is from Ms. Witherspoon of County  
14 Staff who explained that the Applicant had failed to provide evidence of an actual emergency.  
15 Mr. Staley's PowerPoint presentation also referenced a problem with fulfilling some WSDOT  
16 projects but he failed to provide any detail as to the circumstances of these projects or any  
17 difficulties encountered by the Applicant. As a result, the Applicant did not provide any clear  
18 evidence that it has been frustrated in attempts to satisfy either emergency projects or any other  
19 public works projects having special requests.

20 Mr. Staley concluded his testimony by challenging the compromise proposed by County  
21 Staff. Again, the Applicant believes that it has been denied the same opportunity that has been  
22 granted to its competitors and asks that its days and hours of operation be expanded accordingly.  
23 The Applicant does not believe that the County's proposed limited amendment will accomplish  
24 this. Additionally, the Applicant objects to the County's added condition requiring mobile  
25 equipment to be fitted with broadband or other non-tonal backup alarms as it believes that this

1 type of alarm system is not well suited for quarry operations. Mr. Staley concluded his  
2 testimony by asking that the proposed amendments be approved as requested.

3 **Public Comment.**

4 As noted in the Staff Report, the Notice of Application/SEPA Notice resulted in more  
5 than twenty written comments in response (Exhibit 6) all of which were in opposition to the  
6 requested amendment. In addition to these earlier written comments, eleven members of the  
7 public provided oral testimony during the hearing. All testimony was again in opposition to the  
8 requested amendment but, as the same time, was often complimentary to the Applicant for its  
9 employee's courteous behavior (especially its truck drivers) and also thanked the Applicant for  
10 its generosity to the Evaline Community. Concerns expressed in the earlier written comments as  
11 well as the oral testimony during the public hearing include the following:

12 ● After approximately thirty years of operation, neighbors continue to find that the  
13 quarry's operations greatly impact their daily lives: The various types of noise resulting from  
14 blasting, crushing, sorting, loading and hauling rock product is continuous and unpleasant; dust  
15 is a constant annoyance, as is vibration; and truck traffic makes it difficult to walk or cycle  
16 nearby.

17 ● The current limitations on days and hours of operation allow nearby property  
18 owners respite from the many impacts of the quarry and provide clearly established times when  
19 neighbors can walk, be outdoors, socialize, etc. without risk of interference from mining  
20 operations.

21 ● Neighbors especially fear the negative impacts of evening and nighttime  
22 operations on their evening activities and sleeping behaviors, especially their children's sleep.  
23 This concern is shared by the Evaline School District.



1           1.       **The Applicant's request to operate during evening and nighttime hours is**  
2 **expressly precluded by LCC 17.142.210(h).**

3           The Applicant asks to extend the processing of rock and loadout of customer trucks to  
4 10:00 p.m., seven days per week, and also allow nighttime loadout of customer trucks from  
5 10:00 p.m. to 7:00 a.m., seven days per week. But both of these requests are expressly precluded  
6 by LCC 17.142.210(h):

7           "H.    Hours of Operation. Regular hours of operation *shall be between the hours*  
8 *of 6:30 a.m. and 7:00 p.m. . . .*"

9           Without question, the processing of rock and the loadout of customer trucks are part of  
10 the Applicant's regular operations. LCC 17.142.210(h) clearly limits such operations to between  
11 6:30 a.m. and 7:00 p.m. Nothing in the ordinance allows the Hearing Examiner to extend these  
12 normal operations to either 10:00 p.m. or to allow them to occur overnight.

13           The Applicant appears to suggest that the activities proposed to occur during evenings  
14 and overnight are not "regular hours of operation" since the Applicant proposes to utilize them  
15 only "as needed", thus taking them out of the category of "regular operations". I respectfully  
16 disagree with this argument and, to the contrary, find that the proposed expansion of operations  
17 into evening and nighttime hours would render the restrictions in LCC 17.142.210(h)  
18 meaningless. The intent of the ordinance is clear and unambiguous and must be followed.

19           2       **The Doctrine of Res Judicata applies to the conditions imposed on the**  
20 **current permit. These conditions are fixed unless the Applicant can demonstrate a**  
21 **substantial change in circumstances since the conditions were imposed. The Applicant is**  
22 **unable to demonstrate the required substantial change in circumstances.**

23           Res judicata is the well recognized legal doctrine that prevents adjudication of the same  
24 issue more than once if that issue has been fully and finally decided by a valid decision on the  
25 merits. In *Hilltop Terrace Association v. Island County*, 126 Wn.2d 22, 891 P.2d 29 (1995) the

1 Doctrine of Res Judicata was found to apply to quasi-judicial land use decisions including  
2 Special Use Permits.

3 "The central role of adversary litigation in our society is to provide binding  
4 answers. We want to free people from the uncertain prospect of litigation, with  
5 all its costs to emotional peace and the ordering of future affairs. Repose is the  
6 most important product of res judicata.

7 These policies are equally applicable in a quasi-judicial administrative context . . .  
8 we conclude that res judicata is applicable to the present administrative context,  
9 and stands for the general proposition that there must some limit to repeated  
10 submissions of applications involving the same subject matter."

11 *Hilltop Terrace*, Supra at 31.

12 There is no question that the Special Use Permit granted to the Applicant is the type of  
13 "quasi-judicial land use decision" referenced in *Hilltop Terrace*, and that the Doctrine applies so  
14 long as the matter satisfies the four-part test set forth in *Hilltop Terrace*: Res judicata applies if a  
15 prior judgment has a concurrence of identity in four respects with the subsequent action: There  
16 must be identity of (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the  
17 quality of the persons for or against whom the claim is made. *Hilltop Terrace*; Supra at 32. The  
18 present matter easily satisfies this four-part test as it involves the same subject matter, the same  
19 cause of action, the same persons and parties, and the same disputes that were addressed and  
20 resolved as part of the conditions imposed when granting the Applicant its Special Use Permit in  
21 2021.

22 a) **Lewis County has not removed Special Use Permits from the Doctrine of Res  
23 Judicata.**

24 The Applicant correctly notes that *Hilltop Terrace* recognizes that local governments  
25 may chose to not have res judicata apply to their quasi-judicial decisions: "Local legislative  
bodies are free to calibrate the flexibility of their land use decision making by expressly  
specifying the res judicata effect of particular proceedings." *Hilltop Terrace*, Supra at 33.

1 If Lewis County does not want res judicata applied to Special Use Permits it is free to say  
2 so. The Applicant asserts that the County has, in fact, made such a decision as evidenced by two  
3 separate provisions of the County Code:

4 "LCC 17.05.140(4). Permit Denials. If a project permit application is denied, the  
5 department shall not accept a new application for substantially the same matter  
6 *within one years from the date of the final County action denying the prior*  
7 *application*, unless the denial was without prejudice, or in the opinion of the  
8 Director, new evidence is submitted or conditions have changed to an extent that  
9 further consideration is warranted.

10 LCC 17.158.040. Revisions to Special Use Permits. Revisions to Special Use  
11 Permits may be processed as a Type I application; provided, that the proposed  
12 changes are within the scope and intent of the original permit. . . . *Revisions*  
13 *beyond the scope and intent of the original permit shall be processed as a Type III*  
14 *application.*" [NOTE, a Type III application is one heard by the Hearing  
15 Examiner.]

16 The Applicant asserts that LCC 17.05.140(4) impliedly recognizes the right to seek  
17 revision of an earlier decision once a year has passed. I respectfully disagree. By its express  
18 terms, LCC 17.05.140(5) applies to permits that have been *denied*, and not to ones that have been  
19 *granted*, and does not recognize the right to challenge *conditions* imposed on a granted permit.  
20 And, even if it does apply, it requires a demonstration that "new evidence is submitted *or*  
21 *conditions have changed to an extent that further consideration is warranted.*" This is the res  
22 judicata standard.

23 **b) The Applicant must demonstrate a substantial change in circumstances since  
24 the earlier permit.**

25 *Hilltop Terrace* declares that, if res judicata applies, the applicant has the burden of  
demonstrating a substantial change in circumstances or conditions since the permit was issued  
(in this case, 2021). *Hilltop Terrace*, Supra at 33. Further, the "substantial change in  
circumstances" cannot be self-imposed. In *DeTray vs. City of Olympia*, 121 Wn. App. 777, 90

1 P.3rd 1116 (2004), it was held that an applicant's mere wish to increase the intensity of proposed  
2 land use from what had earlier been approved is not a "substantial change in circumstances" and  
3 therefore fails to satisfy the res judicata standard unless some other, external, substantial change  
4 in circumstance can be demonstrated.

5 c) **The Applicant has not demonstrated a substantial change in circumstances.**

6 Simply put, the Applicant has not demonstrated any substantial changes in circumstances  
7 since the Special Use Permit was granted in 2021. The entire focus of the Applicant's  
8 presentation is that its several competitors have an advantage with their allowed days and hours  
9 of operation *but all of these competitor's operations existed in 2021 and have not changed since*  
10 *then*. The Applicant has failed to demonstrate that anything of substance has occurred with  
11 respect to any of its competitors since 2021. Meanwhile, no new competitors have been  
12 introduced; the mining regulations have not substantially changed; the area's zoning has not  
13 changed; the area's land use designation in the Comprehensive Plan has not changed;  
14 surrounding land uses have not changed; the various concerns of adjoining landowners have not  
15 changed; and no other substantial change has been shown to have occurred since the permit was  
16 approved in 2021.

17 It is important to remember that the 2021 permit was the end product of a lengthy and  
18 contentious hearing during which the many concerns of nearby property owners were voiced,  
19 with neighbors asking for a degree of respite from the quarry's many impositions on them.  
20 Meanwhile, the hours of operations for all competitors were all known and had long been  
21 established. The limitations imposed on the Applicant's operations were the end product of all of  
22 these factors, with the Hearing Examiner expressly declaring that the limitations on days and  
23 hours of operation were necessary "to protect quiet enjoyment of neighboring residential  
24 properties" per LCC 17.142.210(2)(h). The Applicant did not challenge this finding.

1 In summary, the Applicant has failed to demonstrate any change in circumstances since  
2 the 2021 Permit was issued, let alone a substantial change in circumstances. Res judicata  
3 precludes the Applicant from relitigating the very same issue that was considered at length in  
4 2021 and resolved through conditions of permit approval..

5 3. **Even if res judicata does not apply to the earlier permit and its conditions,**  
6 **the Applicant has not demonstrated that the proposed expanded operations are warranted.**  
7 **To the contrary, I continue to conclude that restricted hours of operation are necessary to**  
8 **protect the quiet enjoyment of neighboring properties.**

9 Even if LCC 17.142.210(H) did not expressly preclude late evening and nighttime  
10 operations, and even if res judicata did not apply to the 2021 Special Use Permit and the  
11 conditions of its approval, I still concur with County Staff that the current limits remain  
12 necessary to protect the quiet enjoyment of neighboring residential properties. The evidence  
13 presented by all parties demonstrates that there remains an important need to balance the  
14 Applicant's operations with the rights of surrounding property owners. The time limits currently  
15 in effect are intended to accomplish that balance, and the need for them is no less today than it  
16 was in 2021. Even if the 2021 Permit did not exist and this matter was being viewed for the first  
17 time, I would impose the same time limits as are currently imposed in order to protect the quiet  
18 enjoyment of neighboring residential properties.

19 The Applicant has premised its requested amendment on the basis that it is encountering  
20 "an uneven playing field" as compared what its competitors are allowed. But while the Applicant  
21 has undertaken an extensive analysis of the *allowed* operational limits for each competitor, it has  
22 not discussed their *actual* operations: There is no mention of the days and hours each competitor  
23 is actually operating. In the absence of this evidence, it is appropriate to take judicial notice of  
24 what each competitor publicly announces as its days and hours of operation as declared on its  
25

1 current website or Facebook page. The following is the current information for each competitor  
2 taken from current publicly available information:

3	Winston Creek Quarry	8:00 a.m. to 3:30 p.m., Monday through Friday
4		No evening or nighttime activity
5		No weekend activity
6	L-Rock Pit	8:00 a.m. to 5:00 p.m., Monday through Friday
7		No evening or nighttime activity
8		No weekend activity
9	Mandy Road Pit	8:00 a.m. to 4:00 p.m., Monday through Friday
10		No evening or nighttime activity
11		No weekend activity
12	Alderbrook Quarry	7:30 a.m. to 3:30 p.m., Monday through Friday
13		No evening or nighttime activity
14		8:00 a.m. to noon, Saturday
15	Sterling Breen Pit	7:00 a.m. to 4:00 p.m., Monday through Friday
16		No evening or nighttime activity
17		No weekend activity
18	Brown Quarry	No information available

18 In summary, the publicly announced days and times of operation for the listed  
19 competitors indicate that none operate during evenings or nighttime, and only one, Alderbrook  
20 Quarry, operates on weekends (and only Saturday morning). In practice, then, the playing field  
21 is far more level than has been asserted.

22 Even if the "playing field" was not level, each mining operation must still be examined  
23 separately. Although there are similarities between the Good's Quarry and the others with  
24 respect to zoning designation, etc., aerial mapping and other evidence included in the County's  
25

1 materials clearly demonstrates that the Good's Quarry is more tightly ringed by rural residential  
2 properties than the other quarries. As noted by one public commenter, there are more than thirty  
3 residential properties in close proximity to this operation. A proper balance must be made  
4 between quarry operations and its many residential neighbors.

5 **4. Good cause exists for clarifying the procedures during emergencies and other**  
6 **special operations.**

7 Since 2021, Lewis County has not had reason to declare an emergency requiring the  
8 special operation of any local quarry. Similarly, Lewis County has been able to acquire all  
9 needed rock for its public works projects without requesting special operations by any quarry.  
10 No evidence has been presented that any other relevant jurisdiction has declared an emergency  
11 during the past five years, but there is some evidence that various agencies (BPA, WSDOT) have  
12 had situations which, although not arising to an emergency, would have benefitted from the  
13 Applicant having had clearer directives on how to respond.

14 The County has recognized the benefit of clearer operating rules for declared  
15 emergencies and documented public works contracts, and has proposed a sensible set of rules to  
16 follow in these situations with fair notice to surrounding property owners. I concur with these  
17 recommended changes to the current provisions for special operations.

18 The County suggests two additional conditions to these changes: (1) that mobile  
19 equipment be fitted with broadband or other non-tonal backup alarms; and (2) that the Applicant  
20 construct berms at the north boundary of Area M-3 and the east boundary of Area M-1. While  
21 both suggested conditions are sensible, neither one is directly related to the allowed change in  
22 special operations. I am therefore not imposing either suggested condition.

23 To summarize all of the above, I conclude that the Applicant's request to increase  
24 operations to evenings, nighttime and weekends is not appropriate and that current hours of  
25 operation should remain in effect. I concur with County Staff that the provisions for special

1 operations should be revised to provide better guidance as recommended by the County but  
2 without the County's additional conditions relating to backup alarms and additional berms.

3 Accordingly, I make the following:

4 **FINDINGS OF FACT**

5 **General Findings.**

6 1. The Applicant, Good Crushing, Inc., requests an amendment to the previously  
7 approved Special Use Permit SUP19-0002. The Applicant seeks amendment of existing  
8 Condition No. 23 relating to days and hours of operations. The Applicant asks that Condition  
9 No. 23 be amended as follows:

- 10 ● The days and hours for active mining of the mine's workface and blasting  
11 operations remain as conditioned in SUP19-0002.
- 12 ● Daytime processing and loadout of customer trucks would be allowed 7 days per  
13 week from 7 am to 10 pm, as needed, but with loadout limited to 20 loads per hour.
- 14 ● Nighttime loadout of customer trucks would be allowed up to 7 days per week  
15 from 10 pm to 7 am, as needed, but with loadout limited to 8 loads per hour.

16 2. Any Findings of Fact contained in the foregoing Background, Public Hearing or  
17 Analysis Sections are incorporated herein by reference and adopted by the Hearing Examiner as  
18 his own Findings of Fact.

19 4. All Findings of Fact contained in the earlier Findings of Fact for SUP19-0002 are  
20 incorporated herein by reference.

21 5. Lewis County opposes the Applicant's proposed changes to normal hours of  
22 operation but recommends changes to the current regulations for operations in response to either  
23 a declared emergency or to documented public works contracts requiring work outside regular  
24 hours. The County's proposed changes are set forth in the Public Hearing Section.

1           6.       SUP19-0002, as corrected, was issued May 18, 2021 (the "Special Use Approval  
2 Date").

3           7.       The majority of the mining operation is located within the Rural Development  
4 District 20 Acre (RDD-20) zoning designation but with a small portion south of the current  
5 mining operation area zoned Mineral Resource Lands (MRL/Mine). The access road into the  
6 quarry, as well as the commercial scales, office building and night watchman trailer, are located  
7 within the Rural Development District 10 Acre (RDD-10) zoning designation. None of these  
8 zoning designations has changed since the Special Use Approval Date.

9           8.       The zoning designations of all surrounding and nearby properties have remained  
10 unchanged since the Special Use Approval Date.

11          9.       Surrounding development and land uses has remained unchanged since the  
12 Special Use Approval Date.

13          10.      At the time of the Special Use Approval Date, days and hours of operation for  
14 mining operations were regulated by LCC 17.142.200(h). Due to subsequent changes in Chapter  
15 17.142 LCC, these regulations are now found at LCC 17.142.210(h). The current regulation  
16 imposes the same restriction on hours of operation but imposes an additional restriction on the  
17 allowed length of emergency operations (restricted to six months). Otherwise, the restrictions on  
18 hours of operation remain unchanged since the Special Use Approval Date.

19          11.      Since the Special Use Approval Date, Lewis County has not declared any  
20 emergencies requiring special operations of this or any other quarry.

21          12.      Since the Special Use Approval Date, Lewis County Public Works has satisfied  
22 all of its needs for rock material through normal hours of quarry operations.

23          13.      No additional mining operations have been approved in Lewis County since the  
24 Special Use Approval Date. No existing mining operations have had their approved hours of  
25 operation adjusted since the Special Use Approval Date.

1           14.     At the time of the Special Use Approval Date, adjoining and nearby property  
2 owners opposed the Applicant's request for extended hours of operation, including evenings and  
3 weekends, for the various reasons set forth in the earlier Findings of Fact. Adjoining and nearby  
4 property owners remain opposed to the Applicant's request to expand current hours into  
5 evenings, nights and weekends for many of the same reasons as were previously expressed  
6 together with those additional reasons identified in the Public Hearing Section.

7           15.     Nearby property owners have voiced legitimate concerns that increasing the hours  
8 and days of operation would deny them the quiet enjoyment of their neighboring residential  
9 properties and that retaining the current restrictions on normal hours of operation is essential to  
10 protect their quiet enjoyment of their properties.

11           16.     Notice of the application for amendment of the Special Use Permit was properly  
12 published in the Lewis County Journal on May 28, 2025, mailed to surrounding property owners  
13 within 500 feet of the subject parcel on May 27, 2025, and posted onsite by County Staff on May  
14 27, 2025. Notice was also provided to any additional persons who may have commented during  
15 the Notice of Application.

16           17.     Twenty-five public comment letters were received in response to the Notice of  
17 Application (Exhibit 6), generally in opposition to the requested amendment as discussed earlier  
18 in the Public Hearing Section.

19           18.     A Notice of Public Hearing was published on February 10, 2026, in The  
20 Chronicle, mailed to property owners within 500 feet of the subject parcel's outer boundaries, to  
21 any additional parties of record, and to the Applicant on February 5, 2026. The public hearing  
22 notice was also posted by County Staff on the site on February 6, 2026.

23           19.     All County, State, federal and tribal agencies having an interest in the project  
24 have also been notified as set forth on pages 4 and 5 of the Staff Report.

1           20.     The County, acting as Lead Agency, issued its SEPA Determination of Non-  
2 Significance (DNS) for the requested amendment on May 28, 2025 (Exhibit 14). No appeals  
3 were filed and the DNS was retained and is now final.

4           21.     In order to confirm that the proposed amendment and hours of operation would  
5 remain in compliance with noise levels established by Chapter 173-60 WAC, the Applicant  
6 arranged for a Sound Analysis by an acoustical engineer from Kaufman Engineers (Exhibit 1).  
7 The resulting Sound Analysis determined that processing in the northern site area as currently  
8 approved under SUP19-0002 would not result in any noise levels above allowed standards,  
9 including during the extended hours of 7:00 a.m. to 10:00 p.m., seven days a week as requested  
10 by the Applicant.

11           22.     The Sound Analysis further determined that loading of customer trucks and  
12 hauling offsite between 7:00 a.m. and 10:00 p.m., seven days a week, up to twenty loads per  
13 hour, would not exceed the allowed noise thresholds.

14           23.     The Sound Analysis determined that during nighttime hours, 10:00 p.m. to 7:00  
15 a.m., customer loads should be limited to eight loads per hour in order to assure compliance with  
16 noise standards.

17           24.     The Sound Analysis further suggested that calculated sound levels from mining in  
18 Area M-3 in the future are expected to exceed noise limits unless additional noise mitigation  
19 measures are implemented. The report suggests that prior to commencing mining in Area M-3,  
20 berms be constructed at the north boundary of Area M-3 and the east boundary of Area M-1.  
21 The height of the berms should be 15 feet.

22           25.     County Staff asks that these recommended berms be imposed as a condition of  
23 any change to Condition No. 23.



1           8.     The Applicant's request to extend processing and loadout of customer trucks to  
2 10:00 p.m., and to undertake nighttime loadout of customer trucks from 10:00 p.m. to 7:00 a.m.,  
3 is in conflict with the express provision of LCC 17.142.210(h).

4           9.     The Doctrine of Res Judicata applies to Special Use Permits. *Hilltop Terrace*  
5 *Association v. Island County*, 126 Wn.2d 22, 891 P.2d 29 (1995).

6           10.    Lewis County has not enacted any ordinances which remove Special Use Permits  
7 from the application of the Res Judicata Doctrine.

8           11.    The Applicant asserts that LCC 17.05.140(4) is a legislative declaration that res  
9 judicata does not apply to permit approvals. In the event that LCC 17.05.140(4) is deemed to  
10 exempt permits from the application of res judicata, it still requires a demonstration by the  
11 Applicant that "conditions have changed to an extent that further consideration is warranted."  
12 The Applicant has not met its burden of demonstrating that conditions have changed to an extent  
13 that further consideration is warranted.

14           12.    The Doctrine of Res Judicata requires that the Applicant demonstrate a substantial  
15 change in circumstances since the permit was issued.

16           13.    The Applicant's desire to increase the intensity of the existing land use is not a  
17 substantial change in circumstances. *DeTray v. City of Olympia*, 121 Wn. App. 777, 90 P.3rd  
18 1116 (2004).

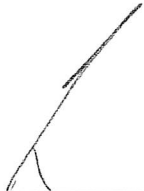
19           14.    The Applicant has not met its burden of demonstrating a substantial change in  
20 circumstances since the permit was issued that would justify an expansion of hours of operation.

21           15.    The current restriction on days and hours of operation remain necessary to protect  
22 the quiet enjoyment of neighboring residential properties.



- 1           ○ During a temporary extension for **documented public works contracts**  
2 requiring work outside regular hours:  
3           ▪ the extended hours for daytime processing and loadout of customer  
4 trucks – up to 6 days per week (Monday – Saturday), 7:00 am to 8:00  
5 pm. Loadout will be limited to 20 loads per hour.  
6           ▪ No processing and/or loadout of customer trucks is authorized between  
7 the hours of 8:00 pm and 7:00 am at any time for this type of  
8 temporary extension to regular hours.  
9           ○ Temporary extension to regular hours of operations does not apply to active  
10 mining of the mine’s workface and blasting operations. Those activities will  
11 remain as conditioned in in the underlying permit (SUP19-0002).  
12           ○ The operator shall provide notice to the County and to the property owners  
13 within a quarter mile (1,320 feet) of all mine property lines as shown in  
14 Exhibit 25 of the original special use permit SUP19-0002 (provided here as  
15 Exhibit 17) at least 48 hours before any such temporary extension begins. The  
16 notice shall include identification of the specific extended operating hours, the  
17 duration of the extended  
18 hours and a statement for which reason (declared emergency event or for a  
19 documented public works contract requiring work outside regular hours) the  
20 extension is used. Notification to the public shall be provided in one or more  
21 of the following methods: in-person, by phone call (including text) or by  
22 email. Notification to Lewis County Community Development shall be sent  
23 by email. Additional methods of notification may be used by the Applicant.  
24           ○ During all operations under extended hours, the operator shall maintain daily  
25 logs of load counts and hours of operation and shall submit an annual  
monitoring report showing compliance with this Condition of Approval to the  
Lewis County Community Development Department by January 31st of each  
year for all operations under extended hours conducted from January 1st to  
December 31st of the previous calendar year.

DATED this 24 day of March, 2026.

  
\_\_\_\_\_  
Mark C. Scheibmeir  
Lewis County Hearing Examiner

# **Exhibit B**

BEFORE THE LEWIS COUNTY HEARINGS EXAMINER

IN RE THE APPLICATION OF GOOD ) HEARING NO. 26-2-001  
CRUSHING, INC. TO AMEND )  
SPECIAL USE PERMIT SUP19-0002 ) ORDER DENYING MOTION FOR  
REASSIGNMENT

This matter comes before the Hearing Examiner on the Applicant's Motion for Reassignment in which it is alleged that the Hearing Examiner is friends with either Lona Lewis, Shirley Lewis, or Lona Lewis' son (whose name is not provided). In response, the Hearing Examiner declares:

I am unfamiliar with either Lona or Shirley Lewis.

I did not grow up in the State of Washington and therefore have no childhood friends living nearby, including Lona Lewis' son, whoever that may be.

As the son of Lona Lewis is not identified by name, I am unable to respond fully to the claim that this individual is known to me but I am unaware of any friend or acquaintance in Lewis County with the last name of Lewis.

The Applicant's Motion is therefore **Denied**.

DATED this 30th day of January, 2026.



Mark C. Scheibmeir  
Lewis County Hearing Examiner

# **Exhibit C**

1                                   BEFORE THE LEWIS COUNTY HEARINGS EXAMINER

2 IN RE THE APPLICATION OF GOOD            )           HEARING NO. 26-2-001  
3 CRUSHING, INC. TO AMEND                 )           ORDER DENYING APPLICANT'S  
4 SPECIAL USE PERMIT SUP19-0002         )           PETITION FOR RECONSIDERATION

5  
6           THIS MATTER comes before the Hearing Examiner upon the Petition of the Applicant,  
7 Good Crushing, Inc., that the Hearing Examiner reconsider his earlier Order denying the  
8 Applicant's Request for Reassignment in which the Applicant sought to have a different Hearing  
9 Examiner appointed for this hearing on the basis that the current Hearing Examiner has a  
10 conflict, or at least the appearance of a conflict. Having considered the Petition and the  
11 supporting Declarations, including attachments, the Request for Reconsideration is DENIED.

12           In further response to the Petition the Hearing Examiner declares as follows:

13  
14           As I noted in an earlier hearing in 2019 involving this same land use and the same  
15 applicant, Robert Lewis was a friend of mine during law school. Mr. Lewis and I were in the  
16 same class at the UW School of Law from 1978 to 1981, or nearly 50 years ago. After law  
17 school, Mr. Lewis moved to Clark County where he eventually became a Clark County Superior  
18 Court Judge, although to the best of my knowledge he has since retired. I gradually lost contact  
19 with Mr. Lewis and it has been at least 30 years since I last communicated with him. I assume,  
20 but do not know, that he continues to live in Clark County. I have never spoken to him about the  
21 pending matter.

22           At the beginning of the 2019 hearing involving the same applicant and same land use, I  
23 notified all parties of this long-ago association with Mr. Lewis, and that I was aware that his  
24 family lived near the project site, but that I had no other connection to the Lewis family. The  
25

*Order Denying Applicant's  
Petition for Reconsideration - 1*


**LEWIS COUNTY HEARING EXAMINER  
299 N.W. CENTER ST. / P.O. BOX 939  
CHEHALIS, WASHINGTON 98532  
Phone: 360-748-3386/Fax: 748-3387**

1 Applicant did not object to my continuing as Hearing Examiner. My Decision was favorable to  
2 the Applicant's requests.

3 As noted in my earlier Declaration in response to the Applicant's original Motion, I am  
4 unfamiliar with either Lona Lewis or Shirley Lewis. From the Applicant's declarations I assume  
5 that Lona Lewis is Robert Lewis' mother but I do not know this for certain. I recall having  
6 briefly met Mr. Lewis' mother (presumably Lona) many years ago—at least 40 years ago. As I  
7 recall, the meeting may have lasted a few minutes. I have not spoken to her since. I do not recall  
8 ever speaking to Shirley Lewis.  
9

10 Since the 2019 hearing in which I noted my earlier connection to Robert Lewis, I have  
11 had no communication with either Mr. Lewis or any member of his family. To the contrary, my  
12 prior association from law school has dimmed further into memory.

13 DATED this 10<sup>th</sup> day of February, 2026.

14   
15 \_\_\_\_\_  
16 Mark C. Scheibmeir  
17 Lewis County Hearing Examiner  
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