

November 10, 2020

**TRANSMITTED VIA ELECTRONIC MAIL ONLY**

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Lewis County Planning Commission  
c/o Ms. Brianna Uy, Associate Planner  
Lewis County Community Development  
351 NW North Street  
Chehalis, Washington 98532

Re: Jorgensen Timber, LLC – Resource Land Opt-In Application (RZ19-00001)  
Applicant’s Response to Public Comments Received After October 27, 2020  
Public Hearing

Dear Planning Commissioners:

As you know, this firm represents Jorgensen Timber, LLC, the Applicant for the above-referenced application, and I appeared on behalf of the Applicant before the Planning Commission at the October 27, 2020 public hearing on the proposal. Pursuant to Lewis County Code (“LCC”) 17.12.050(2)(e)(v), members of the public had up to one week following the hearing to submit additional written comments. On November 6, 2020, the County provided the Applicant with a copy of the additional comments received within this additional comment period, totaling sixteen pages.

This letter provides the Applicant’s response to these additional public comments. In the interest of efficiency, the additional comments are generally summarized below, followed by the Applicant’s response in italics:

Impacts of the Existing Quarry and/or its Proposed Expansion. Several commenters expressed concerns regarding various impacts of the existing Good Quarry and proposed expansion of that quarry on their homes and properties.

*Applicant’s Response: The impacts of the existing Good’s Quarry operation and any proposed expansion of the mining area of Good’s Quarry on the commenters’ properties are matters well outside the Applicant’s control. Any impacts of this existing mine are respectfully also outside the scope of the criteria that the Planning Commission are to consider in evaluating the proposed rezone of the Applicant’s property under the opt-in provisions for mineral resource land designation found in LCC 17.30.850. This does not mean that the commenters are without remedy or recourse, however, as the County has jurisdiction to enforce existing permit conditions, and any future expansion of the existing mine will require review under the State*

*Environmental Policy Act (“SEPA”) (RCW 43.21C) as well as Hearing Examiner approval of a new Special Use Permit (“SUP”) applying specific land use standards for surface mines (LCC 17.142.200(1)). As County staff discussed during the October 27, 2020 Planning Commission public hearing, the County’s approval criteria under LCC 17.142.200 for new and expanded surface mines are robust and must be met in addition to the general use findings in LCC 17.142.020 required for all applications. For ease of the Planning Commission’s reference, an excerpt of the surface mining approval standards from LCC 17.142.200 is attached at **Tab A**.*

Environmental Impacts of Future Mine Operations. Commenters generally expressed concern with a number of potential environmental impacts of future mining operations including slope stability, water quality, well water quality, aquifer recharge, habitat, flooding, noise, and vibrations.

*Applicant’s Response: As described in the preceding response and detailed in the County staff’s presentation and hearing report for the October 27, 2020 Planning Commission public hearing, these types of impacts will be reviewed at the time a specific future mine project is proposed at the Applicant’s property. The timing and duration of possible mining activity will depend on market conditions such as price, demand, quality, and competition. In addition, the extent of potential mining on the Applicant’s property also has not been determined at this stage of the process. Approval of any future mine will require County review under the State Environmental Policy Act (“SEPA”) (RCW 43.21C) as well as Hearing Examiner approval of a new Special Use Permit (“SUP”) applying specific land use standards for surface mines (LCC 17.142.200(1)). County standards for surface mines in LCC 17.142.200(2) include specific requirements and limits applicable to setbacks/screening, road use, traffic safety, noise, light, blasting, and hours of operation. LCC 17.142.200(2)(e) imposes additional standards for surface mines proposed in aquifer recharge areas. With respect to one commenter’s assertion that a future mine would be “within 40 feet of their backdoor” that is not legally possible; the minimum setback to an existing dwelling under LCC 17.142.200(2)(a)(iv) is currently 200 feet and state mining standards require a minimum of a 100-foot setback from the property line. Under applicable standards, any future mining permit will also require detailed analysis of groundwater conditions at the site to include assessment of potential impact to surrounding wells.*

*With respect to environmental impacts specific to this non-project proposal, the Applicant also notes for purposes of the record that the March 17, 2020 SEPA determination for the proposed rezone was not appealed.*

Impacts of Future Mine Operations – Property Values. Some commenters expressed concern regarding potential adverse impact on their residential property values from future mine operations.

*Applicant’s Response: As detailed in the County staff’s presentation and hearing report for the October 27, 2020 Planning Commission public hearing, a surface mine is an allowed use on the Jorgensen property with the existing RDD-20 zoning. The existing Good Quarry, located*

*immediately to the south, is an example of a permitted mine within the RDD-20 zone. The commenters' claims of additional adverse impact to property values, which will result from designation of the Jorgensen property as mineral resource land are not substantiated with specific evidence. Moreover, while potential impacts to surrounding property values are not a factor for consideration within the approval criteria for the proposed rezone, the value of the expected mineral resource within the Jorgensen property is. The submitted Geologic Assessment for the Jorgensen property estimates that value at \$10 million, or ten times what the code specifies as the minimum expected value for opt-in designation. See LCC 17.30.720(2).*

Current "Recreational" Use of Property. One commenter expressed that the Jorgensen property is currently a "safe area available for recreational ..." uses and so should not be converted to other uses.

*Applicant's Response: The Jorgensen property is privately owned, forested, property to which no recreational or casual users have current legal rights of access. Any members of the public who may be accessing the property for recreation as described in this comment are illegally trespassing and should respectfully cease and desist.*

Mr. Battuello's Qualifications. One commenter questioned the validity of Mr. Battuello's professional credentials based on an internet search.

*Applicant's Response: A copy of Mr. Battuello's professional licensure is attached at **Tab B.** Mr. Battuello's CV documenting his academic and professional credentials and extensive experience with surface mines and related permitting in Washington was enclosed with the Applicant's comment for the October 27, 2020 Planning Commission Public Hearing and is part of the record.*

In general terms, the comments that the Planning Commission received during and after the public hearing opposing the Applicant's proposal express strong dislike of mining and community displeasure that the Jorgensen property may be mined at some point in the future. In Washington, it is well-settled that citizen complaints and expressions of community displeasure are not legally adequate grounds to deny a land use application. *See Anderson v. Pierce Cty.*, 86 Wn. App. 290, 305, 936 P.2d 432, 441 (1997). Rather, in the land use context, a reviewing body, whether it be the Hearing Examiner, the Planning Commission, or the Board of County Commissioners, must confine its consideration to applying the standards and criteria in the laws and codes governing the application to the facts of the specific application under review. *Maranatha Min., Inc. v. Pierce Cty.*, 59 Wn. App. 795, 804-05, 801 P.2d 985, 991-92 (1990).

While the Applicant's neighbors may object, the fact is that the Applicant's proposal meets the approval criteria in LCC 17.30.850 and is fully consistent with the County's Comprehensive Plan as detailed in the staff's October 27, 2020 hearing report. As a result, the Planning Commission both can and should recommend approval of the proposed rezone to the Board of County Commissioners.

Lewis County Planning Commission  
c/o Ms. Brianna Uy, Associate Planner  
November 10, 2020  
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Thank you for the opportunity to provide this response to additional public comment.

Very truly yours,



Heather L. Burgess

HLB/dlg

cc: **(via email only w/attachments)**

Client

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**Attachments:**

**Tab A** – Code Excerpt, LCC 17.142.200 (Land Use Standards – Surface Mines)

**Tab B** – Professional License of Peter Battuello

## Tab A

### Code Excerpt, LCC 17.142.200 (Land Use Standards – Surface Mines)

#### 17.142.200 Surface mining areas.

(1) Applicability. This section applies to the creation of new surface mining areas or the expansion of lawfully permitted activities beyond an approved DNR reclamation plan area in effect on July 26, 1999; provided, however, this does not cover any mining activity which is less than three acres in size.

(2) Mine Development Standards. All permits issued pursuant to this section shall require the following minimum standards. The hearing examiner may increase buffers and mitigation when good cause is shown.

(a) Setbacks/Screening.

(i) A 50-foot setback from the mine property and from all abutting property, consistent with and subject to the reduction provisions of LCC [17.30.810](#), shall be maintained for areas of direct cut or fill connected with resource extraction operations. For mining operations, the setbacks may be increased when necessary to provide lateral support for abutting properties or public rights-of-way.

(ii) A 25-foot-wide screen, consisting of sight-obscuring vegetation, berms, or other methods approved by Lewis County, shall be maintained within the 50-foot setback on the mine property. This screen is meant to conceal the mine from public rights-of-way and/or property used for residential purposes.

(iii) Any direct extraction operation areas within a public utility right-of-way shall be subject to the written conditions of approval from the affected utility, which shall be incorporated into the permit.

(iv) A 200-foot setback shall be maintained between any mining activity and any existing structure occupied for sleeping or eating purposes but not including accessory structures such as barns or outbuildings, existing at the date of application.

(b) Road Use. To assure the maintenance and development of adequate county roadways, owners of surface mining operations may be required to enter into a haul route agreement with the county engineer upon adoption and implementation of a haul route agreement program. The haul route agreement shall address impacts immediately attributable to the project use.

(c) Traffic Safety. The operator may be required to install traffic improvement, control, and warning signs to assure adequate access and traffic safety.

(d) Noise/Bright Lights.

(i) No development or activity shall exceed the maximum environmental noise levels established by Chapter [173-60](#) WAC.

(ii) Bright lights shall be shaded or shielded from adjoining residential properties.

(e) Surface Mining Operation within Critical Aquifer Recharge Areas. Surface mining operations within critical aquifer recharge areas (as designated in Chapter [17.38](#) LCC) shall meet the following standards:

(i) Fuel tanks and oil drums shall be double containment construction and protected by bermed areas having adequate capacity to accommodate, contain, and allow the removal of petroleum spills. Fuel nozzles shall not contain locking devices. Fuel storage shall be above ground. Fueling of mobile equipment shall be located at least 20 feet above the seasonal high ground water level or within lined and bermed areas with adequate capacity to accommodate, contain, and allow the removal of petroleum spills. Where the nature of the operation is such that the machinery cannot be moved for fueling, or the aquifer is less than 20 feet from the surface, the hearing examiner may approve an alternative fueling plan which accomplishes aquifer protection.

(ii) All operations shall maintain a fuels/hazardous waste management plan maintained by the operator and available on the site at all times.

(iii) Surface mines shall not use any noxious, toxic, flammable, compactable, or combustible materials not specifically authorized by Lewis County department of health for backfill or reclamation. Noncontaminated process water used for gravel washing shall be routed to settling ponds to minimize off-site discharges. A general permit from the Department of Ecology for process and stormwater discharge may substitute for these requirements.

(iv) On-site truck and equipment wash runoff shall be routed to retention facilities equipped with an oil-water separator prior to its release to settling ponds.

(v) Use of chemicals, petroleum or hazardous products, and disposal of such products, in concrete or asphalt plant operations within critical aquifer recharge areas shall meet the standards set forth in Chapter [90.48](#) RCW and Chapter [173-303](#) WAC.

(f) Public Safety. Owners of surface mines shall ensure their operation(s) will not be hazardous to neighboring uses. Blasting activities shall be conducted so that ground vibrations comply with all state laws about peak particle velocity, air pressure, and other state requirements, including but not limited to Chapter 9 of the Blasting Guidance Manual identified below. All fly-rock shall be contained within the site. All activities shall comply with the standards set forth in official guidelines, including but not limited to Office of Surface Mining U.S. Department of Interior, Blasting Guidance Manual, 1987 ed., Explosives: WAC [296-52-493](#), Part F, or as revised.

(g) Surface Water Permit. A National Pollutant Discharge Elimination System (NPDES) sand and gravel general permit or individual permit, as appropriate, shall be a condition of approval and incorporated herein by reference.

(h) Hours of Operation. Regular hours of operation shall be between the hours of 6:30 a.m. and 7:00 p.m.; blasting shall only occur during the time period between 10:00 a.m. and 4:00 p.m. Prior to any blast, 24-hour notice shall be given to all property owners or residences within 500 feet of any mine property line. If a blast does not occur as scheduled in a notification, 24-hour renotification shall be required. The hearing examiner may inquire into the proposed hours of operation and set additional limits when deemed necessary to protect quiet enjoyment of neighboring residential properties. The hearing examiner may include provisions for exceptions from established regular hours of operation. Extended hours may be requested and approved under conditions set by the hearing examiner, particularly for work on public works contracts where an emergency may require work outside regular hours.

(3) Exceptions. This permit process shall not be applicable to mines regulated under federal mining laws. [Ord. 1292 §23, 2018]

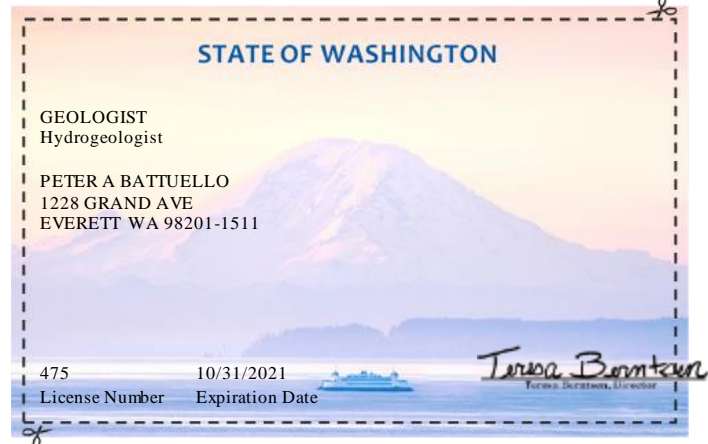
**Tab B**

**Peter Battuello Professional License**





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