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7 SUPERIOR COURT OF WASHINGTON IN AND FOR LEWIS COUNTY

8 MAYTOWN SAND AND GRAVEL, LLC,

9 Petitioner/Plaintiff,

10 v.

11 THURSTON COUNTY, a political subdivision  
12 of Washington State,

13 Respondent/Defendant, and

14 BLACK HILLS AUDUBON SOCIETY and  
15 FRIENDS OF ROCKY PRAIRIE,

16 Additional Respondents.

17 PORT OF TACOMA, a Washington special  
18 purpose district,

19 Additional Party.

20 PORT OF TACOMA, a Washington special  
21 purpose district,

22 Petitioner/Plaintiff,

23 v.

24 THURSTON COUNTY, a political subdivision  
25 of Washington State,

26 Respondent/Defendant, and

BLACK HILLS AUDUBON SOCIETY and  
FRIENDS OF ROCKY PRAIRIE,

Additional Respondents.

MAYTOWN SAND AND GRAVEL, LLC,

Additional Party.

The Honorable Richard L. Brosey

No. 11-2-00395-5

[Consolidated with No. 11-2-00396-3, per  
Stipulated Motion and Order of May 6,  
2011]

FINAL ORDER AND FINAL PARTIAL  
JUDGMENT UNDER CR 54(b) WITH  
REGARD TO PETITIONERS' LUPA  
PETITIONS

FINAL ORDER AND FINAL PARTIAL JUDGMENT UNDER  
CR 54(b) WITH REGARD TO PETITIONERS' LUPA  
PETITIONS - 1

51155720.2 MAYTOWN 54(B) ORDER GRANTING SJ.DOC (READ

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1           **I.       GRANT OF SUMMARY JUDGMENT ON LAND USE PETITION**

2           THIS MATTER came on for hearing on July 20, 2011, on the Port of Tacoma's and  
3 Maytown Sand and Gravel, LLC's Joint Motion for Summary Judgment on their claims under  
4 the Land Use Petition Act, Chapter 36.70C RCW. The Court heard oral argument from the  
5 parties and considered the following:

- 6   1.     The Joint Motion for Summary Judgment;
- 7   2.     The Declaration of Steven J. Gillespie in Support of Port of Tacoma's and Maytown  
8       Sand and Gravel, LLC's Joint Motion for Summary Judgment and attachments thereto;
- 9   3.     Black Hills Audubon Society's Opposition to Motions for Summary Judgment;
- 10  4.     The Declaration of Lonnie Lopez and attachments thereto;
- 11  5.     Thurston County's Brief in Opposition to Petitioners' Motion for Summary Judgment;
- 12  6.     The Second Declaration of Cami Peterson;
- 13  7.     Port of Tacoma's Reply to County's and BHAS's Responses to Joint Motion for  
14       Summary Judgment;
- 15  8.     The Second Declaration of Steven J. Gillespie in Support of Port of Tacoma's and  
16       Maytown Sand and Gravel, LLC's Joint Motion for Summary Judgment and attachments  
17       thereto;
- 18  9.     Maytown Sand and Gravel's Reply to County's and BHAS's Response to Joint Motion  
19       for Summary Judgment;
- 20  10.    The Transcription Certification of Madeleine Rose; and
- 21  11.    The Transcription Certification of Alexis Thurber.

22       The Court is fully advised in the premises.

23       Now, therefore, it is hereby ORDERED that Defendant's Motion for Summary Judgment  
24 is GRANTED, and the Decision of the Hearing Examiner on Project No. 2010102512, Maytown  
25 Aggregates Five Year Review of SUPT-02-0612, dated December 30, 2010, is hereby reinstated  
26 as the Decision of the County.

1           **II.     ENTRY OF PARTIAL FINAL JUDGMENT PURSUANT TO CR 54(b)**

2           The Court, having granted summary judgment to Petitioners on their Land Use Petition,  
3 makes the following FINDINGS OF FACT:

- 4    1.    Petitioners filed a combined LUPA Petition and Verified Petition for Statutory and  
5           Constitutional Writs, Declaratory Judgment, and Injunctive Relief, and Complaint for  
6           Damages.
- 7    2.    Petitioners' requests for statutory and constitutional writs seek review of the same  
8           decision of the Thurston County Board of County Commissioners addressed in the  
9           Petitioners' land use petition, as does a portion of Petitioners' request for declaratory  
10          judgment. Petitioners pleaded these claims in the alternative, that is, in the event the  
11          Court concluded that the Board decision was not a "final land use decision" as required  
12          by the Land Use Petition Act, Chapter 36.70C RCW ("LUPA"), Petitioners sought  
13          review of the Board's decision by writ of review or declaratory judgment .
- 14   3.    The Court's disposition of the LUPA action renders moot the Petitioners' request for  
15          statutory and constitutional writs of review, as well as a portion of Petitioners' request for  
16          declaratory judgment.
- 17   4.    The Court's disposition of the LUPA action does not render moot Petitioners' request for  
18          declaratory and injunctive relief pertaining to the running or tolling of any expiration  
19          periods under the Thurston County Code that affect the special use permit for mining that  
20          is the center of this action.
- 21   5.    The Court's disposition of the LUPA action does not render moot Petitioners' complaint  
22          for damages .
- 23   6.    The Court finds there is no just reason for delaying entry of judgment relating to  
24          Petitioners' LUPA action (or for delaying an appeal of the same) after considering,  
25          among other things, the following factors as they apply to the portions of this action that  
26          are not rendered moot by the disposition of the LUPA action: (1) the relationship

1 between the adjudicated and the unadjudicated claims, (2) whether questions that would  
2 be reviewed on appeal are still before the trial court for determination in the  
3 unadjudicated portion of the case, (3) whether it is likely that the need for review may be  
4 mooted by future developments in the trial court, (4) whether an immediate appeal will  
5 delay the trial of the unadjudicated matters without gaining any offsetting advantage in  
6 terms of the simplification and facilitation of that trial, and (5) the practical effects of  
7 allowing an immediate appeal. *See, e.g., Schiffman v. Hanson Excavating Co., Inc.*, 82  
8 Wn.2d 681, 687, 513 P.2d 29 (1973).

9 7. The relationship between the adjudicated and unajudicated claims. The Petitioner's  
10 LUPA action is governed by statute, proceeds on an expedited schedule, and is  
11 independent of the remaining claims for relief.

12 8. Whether questions which would be reviewed on appeal are still before the trial court.  
13 The validity of Petitioners' right to relief under LUPA has been fully and finally  
14 adjudicated in the trial court, and no questions that would be reviewed on appeal are still  
15 before the trial court.

16 9. Whether it is likely that the need for review may be mooted by future developments in  
17 the trial Court. Disposition of the remaining causes of action – the non-moot portion of  
18 the request for declaratory and injunctive relief, and the action for damages – will not  
19 moot the need for review of this Court's disposition of the LUPA petition.

20 10. Whether an immediate appeal will delay the trial of the unadjudicated matters without  
21 gaining any offsetting advantage in terms of the simplification and facilitation of that  
22 trial. There is no reason that an immediate appeal will delay the trial of the unadjudicated  
23 matters, which are not subject to LUPA's statutory timelines in any event.

24 11. The practical effects of allowing an immediate appeal. Washington law favors  
25 expedition and finality in land use decisions. Entering the grant of summary judgment as  
26

1 a final judgment in accordance with CR 54(b) will facilitate the swift and final conclusion  
2 of the subject land use decision by allowing early appeal.  
3

4 In light of the above findings of fact, the Court makes the following CONCLUSIONS OF  
5 LAW:

6 12. The Court finds that the factors listed above in Findings 7-11 favor a determination that is  
7 there no just reason for delaying entry of a judgment. The Court's grant of summary  
8 judgment is final and completely resolves the regulatory questions raised by the  
9 Petitioners' LUPA petitions.

10 13. The Court's grant of summary judgment on Petitioners' LUPA action is hereby certified  
11 as a final and appealable judgment.

12 14. The remaining request for declaratory and injunctive relief and the claim for damages  
13 may go forward during the pendency of any appeal.  
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1 NOW, THEREFORE, FINAL JUDGMENT is hereby ENTERED on the LUPA action.

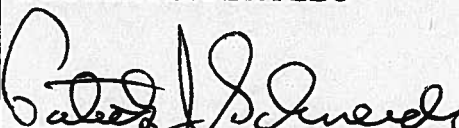
2  
3 DONE IN OPEN COURT this 20 day of July, 2011.

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5  
6 JUDGE 

**Richard L. Brosey**  
**Judge**

7 Presented by:

8 FOSTER PEPPER PLLC

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10

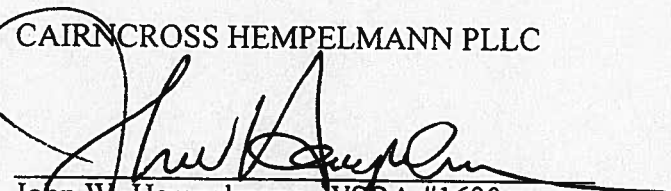
11 J. Tayloe Washburn, WSBA #13676

12 Richard L. Settle, WSBA #3075

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14 Attorneys for Plaintiff/Petitioner Port of Tacoma

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21 copy received:

22 Mark Johnson

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24 Attorneys for Thurston County

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26 Mr. Robert Williams

Mr. Robert Williams

FINAL ORDER AND FINAL PARTIAL JUDGMENT UNDER  
CR 54(b) WITH REGARD TO PETITIONERS' LUPA  
PETITIONS - 6

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