September 15, 2008

Don Burbank
Burbank Investments, LLC
PO Box 1354
Buckley, WA 98321

RECEIVED
JUN 13 2016

RE: Lots A and B, Coul Avenue, Buckley, Washington
Wetland Evaluation

Dear Don:

We evaluated the above referenced properties (Figure A) and found no jurisdictional wetlands. The property is surrounded by single family lots. To the north is Coul Avenue and around the perimeter are undeveloped single family lots or lots with houses on them.

VEGETATION

The vegetation of the site is dominated by domestic pasture grasses and other plants found in the urban area of Buckley. No significant presence of hydrophytic vegetation was found to indicate that wetlands are present.

SOILS

The Soil Survey of Pierce County Area maps the entire site as the Buckley Series.

Per the attached cover sheet and the accompanying Hearing Examiner's decision, ample evidence suggests that the soils do not match the Buckley Series, but the Enumclaw Series. This is not a hydric soil, and therefore the site does not contain jurisdictional wetlands.

Glacial till, compacted by the weight of numerous advancing and retreating ice sheets, served as a resistant base. The associated climate changes permanently altered the soil landscapes of the lower Puget Sound. Approximately 5,000 years ago a massive mud flow from Mount Rainier, the Osceoa, covered the area with tens of feet of a slurry of mud, ice, ash and rocks. The mud flow is estimated at a height of 60 feet and traveled at between 60 to 90 miles per hour. As the flow slowed it set up over time as concrete sets up.

3303 43rd St. NW • Gig Harbor, WA 98335, USA • 253.858.7055 • Fax: 253.858.2534 • ajb@wa.net

Subsequently a thick layer of ash and aeolian deposts mantled the mud flow. Constantly changing Paleoclimate conditions caused by significant temperate fluctuations resulted in air turbulence. Strong winds would entrain the silt and sand from the barren landscape. Eolean deposits combined with ash from the Cascade Mountains capped the area.

Methodology

FIELD PROCEDURES AND STANDARDS

Field procedures and standards used for this study include the USDA Natural Resources Conservation Service Guidelines for describing and classifying soils. The Munsell Soil Color Book was used to describe soil color. The Washington State Wetlands Identification and Delineation Manual (Washington State Department of Ecology Manual, 1997) was used as the technical basis for identifying and delineating wetlands.

Other sources of information used to evaluate the site included USDA-NRCS Soil Survey, geologic history (sequence of events), historic disturbances, landscape features, diagnostic horizons, horizon sequences, and other soil features such as tephra, Ab horizons, albic horizons, spodic horizons, ortstein, filled root channels, fired peds, redoximorphic features, paleoenvironments, Fe-depleted matrix, iron pore linings and concentrations with diffuse vs. sharp boundaries, alluvial vs. redox iron concentrations, soil hydrology, contemporary vs. relic redoximorphic features, and filled worm channels. Understanding and the application of the basic concepts of hydric soil morphology and wetland soil biogeochemistry can provide an invaluable tool for delineation of wetlands.

Thirteen test holes were dug in the northern wooded area. This area has had the vegetation removed and wood chips piled in it. The test holes were dug with a small track excavator to depths ranging from 21 to 30+ inches. The soils generally had a very dark brown bordering on black A horizon underlain by a brown Bw horizon. The soils transition into a gray to grayish brown C horizon commonly identified as the Buckley series on the mud flow. The soils do not match the description of the Buckley series as a brown Bw horizon is present. The described soils fall into an unmapped soils series. For simplicity sake, I like to call the soil described above as "Enumclaw soil".

Soil of this description are present throughout the Buckley plateau. This soil was not broken out on the soil survey and does not show up on the soil survey as the map units were too small to break out for mapping. This soil

also acts similar to the Buckley series thus it was included in the Buckley map unit. It was included in the Buckley map unit as the Buckley series is more restrictive based on the wet nature of the Buckley series. The soil with the most restrictive feature is mapped because if one manages for the Buckley map unit restriction, the soil with less restriction will be adequately manages also.

The "Enumclaw soil" has a brown Bw-horizon, indicating the soil is not a hydric soil. The Buckley soil lacks this brown Bw horizon, making it a hydric soil. The two soils are present across the White river on the same landscape position i.e. mud flow. Dale Snyder authored the soil survey for King County and recognizes this differentiation. Chris McAuliffe of the Army Corps has run into this situation and also recognizes this differentiation and call the Buckley soil wetland and the "Enumclaw soil" non-wetland.

The A horizon very dark brown but falls short of 1 chroma. The A horizon in a true Buckley profile is black.

The dark brown to black A-horizon of the soils on the site is an umbric horizon, similar to what we see in the Spanaway series. Many of the thick, dark A-horizons are formed under hydric conditions. We have soils in Pierce County with dark colored surface horizons similar to and including the Spanaway series, that are not hydric soils.

HYDROLOGY

The site has a drainage ditch crossing from east to west. The drainage ditch is constructed through uplands and therefore is not jurisdictional in the City of Buckley.

Please find accompanying data sheets documenting the soils of the site, whereas the vegetation is an urban vegetation, it can be assumed that it is hydrophytic, but since the soils are not hydric soils, the site does not meet the three parameter criteria of containing wetlands.

If you have any questions please feel free to call me.

Sincerely,

AJ Bredberg

Location Map

NORTH

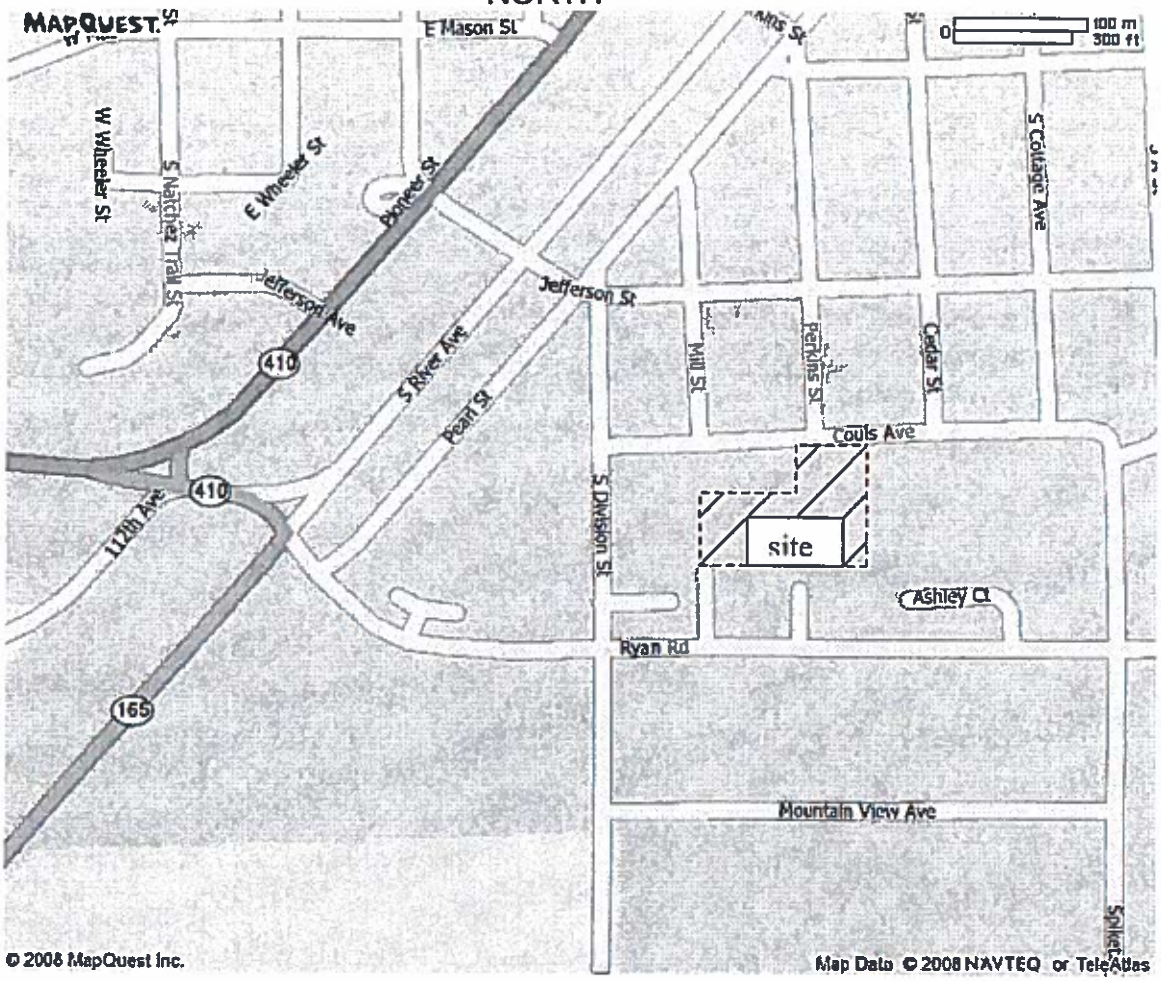

FIGURE 1: LOCATION MAP
BURBANK, BUCKLEY
B&A, INC., GIG HARBOR, WA 98335
BA # 4470 09/12/08

AIR PHOTO

NORTH

FIGURE 2: AIR PHOTO
BURBANK, BUCKLEY
B&A, INC., GIG HARBOR, WA 98335
BA # 4470 09/12/08

Soil Map

NORTH

Pierce County Area, Washington (WA653)

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
8A	Buckley loam	2.3	100.0%
Totals for Area of Interest (AOI)		2.3	100.0%

FIGURE 3: SOIL MAP
BURBANK, BUCKLEY
B&A, INC., GIG HARBOR, WA 98335
BA # 4470 09/12/08

NWI MAP

NORTH

FIGURE 4: NWI MAP
BURBANK, BUCKLEY
B&A, INC., GIG HARBOR, WA 98335
BA # 4470 09/12/08

USGS MAP

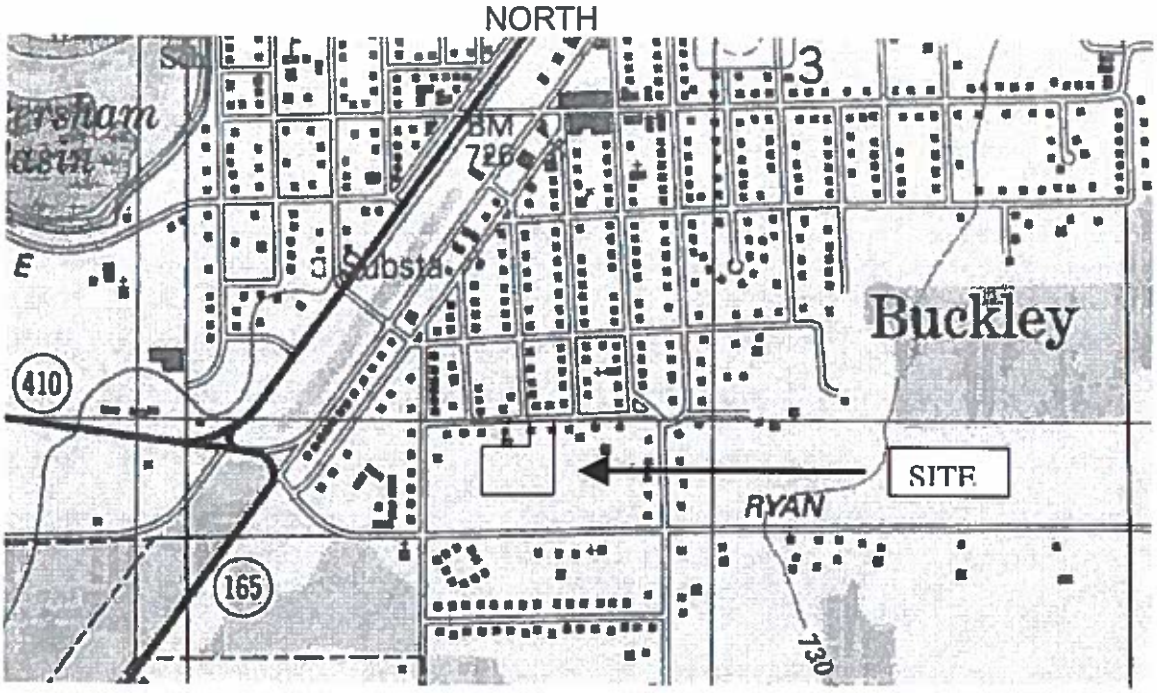

FIGURE 5: USGS MAP
BURBANK, BUCKLEY
B&A, INC., GIG HARBOR, WA 98335
BA # 4470 09/12/08

DATA FORM 1 *(Revised)*
Routine Wetland Determination
(WA State Wetland Delineation Manual or
1987 Corps Wetland Delineation Manual)

Project/Site: Burbank Plat
Applicant/owner: Don Burbank
Investigator(s): AJB

Date: June 10/09
County: Pierce
State: WA
S/T/R: 3/19N/16E

Do Normal Circumstances exist on the site? (yes) no
Is the site significantly disturbed (atypical situation)? yes (no)
Is the area a potential Problem Area? yes (no)
Explanation of atypical or problem area:

Community ID:
Transect ID:
Plot ID: TH 1

VEGETATION (For strata, indicate T = tree; S = shrub; H = herb; V = vine)

Dominant Plant Species	Stratum	% cover	Indicator	Dominant Plant Species	Stratum	% cover	Indicator
Fescue	HE	20	FAC				
Red top	"	80	FAW				

HYDROPHYTIC VEGETATION INDICATORS:

% of dominants OBL, FACW, & FAC 100

Check all indicators that apply & explain below:

Visual observation of plant species growing in areas of prolonged inundation/saturation ____
Morphological adaptations ____
Technical Literature ____
Physiological/reproductive adaptations ____
Wetland plant database ____
Personal knowledge of regional plant communities ____
Other (explain) ____

Hydrophytic vegetation present? (yes) no
Rationale for decision/Remarks:

HYDROLOGY

Is it the growing season? (yes) no

Based on: ____ soil temp (record temp ____)
other (explain)

Dept. of inundation: ____ inches

Depth to free water in pit: ____ inches
Depth to saturated soil: ____ inches

Check all that apply & explain below:
Stream, Lake or gage data: ____
Aerial photographs: ____ Other: ____

Water Marks: yes (no) on	Sediment Deposits: yes (no)
Drift Lines: yes (no)	Drainage Patterns: yes (no)
Oxidized Root (live roots) Channels <12 in. yes (no)	Local Soil Survey: yes (no)
FAC Neutral: yes (no)	Water-stained Leaves yes (no)

Other (explain):

Wetland hydrology present? yes (no)
Rationale for decision/Remarks:

SOILS

7 HL

Map Unit Name Enumclaw
(Series & Phase)

Drainage Class mod well

Field observations confirm mapped type? Yes No

Taxonomy (subgroup) _____

Profile Description

Depth (inches)	Horizon	Matrix color (Munsell moist)	Mottle colors (Munsell moist)	Mottle abundance size & contrast	Texture, concretions, structure, etc.	Drawing of soil profile (match description)
0-9	Ap	10YR2/1.5			SiL	
9-13	Bw	10YR3/2			fSL/SiL	
13-18	BC	10YR4/2	10YR4/6	c2d	SL	

Hydric Soil Indicators: (check all that apply)

- ____ Histosol
- ____ Histic Epipedon
- ____ Sulfidic Odor
- ____ Aquic Moisture Regime
- ____ Reducing Conditions
- ____ Gleyed or Low-Chroma Colors
- ____ Concretions
- ____ High Organic Content in Surface Layer of Sandy Soils
- ____ Organic Streaking in Sandy Soils
- ____ Listed on Local Hydric Soils List
- ____ Listed on National Hydric Soils List
- ____ Other (ex plain in remarks)

Hydric soils present? yes no

Rationale for decision/Remarks:

Wetland Determination (circle)

Hydrophytic vegetation present? yes no

Hydric soils present? yes no

Wetland hydrology resent? yes no

Is the sampling point within a wetland? yes no

Rationale/Remarks:

NOTES:

DATA FORM 1 *(Revised)*
Routine Wetland Determination
(WA State Wetland Delineation Manual or
1987 Corps Wetland Delineation Manual)

Project/Site: Burbank Plat Applicant/owner: Don Burbank Investigator(s): AJB	Date: June 10/09 County: Adams State: WA S/T/R: 3/19N/16E
Do Normal Circumstances exist on the site? yes no Is the site significantly disturbed (atypical situation)? yes no Is the area a potential Problem Area? yes no Explanation of atypical or problem area:	Community ID: Transect ID: Plot ID: TH 2

VEGETATION (For strata, indicate T = tree; S = shrub; H = herb; V = vine)

Dominant Plant Species	Stratum	% cover	Indicator	Dominant Plant Species	Stratum	% cover	Indicator
Red Alder	Sap	40	FAC				
Hard Hack	S/H	20	FACW				
Red top	H/E	40	FACW				

HYDROPHYTIC VEGETATION INDICATORS:

% of dominants OBL, FACW, & FAC 100

Check all indicators that apply & explain below:

Visual observation of plant species growing in areas of prolonged inundation/saturation ____
Morphological adaptations ____
Technical Literature ____
Physiological/reproductive adaptations ____
Wetland plant database ____
Personal knowledge of regional plant communities ____
Other (explain) ____

Hydrophytic vegetation present? yes no
Rationale for decision/Remarks:

HYDROLOGY

Is it the growing season? yes no

Based on: _____ soil temp (record temp _____)
other (explain)

Water Marks: yes no on	Sediment Deposits: yes no
Drift Lines: yes no	Drainage Patterns: yes no
Oxidized Root (live roots) Channels <12 in. yes no	Local Soil Survey: yes no
FAC Neutral: yes no	Water-stained Leaves yes no

Dept. of inundation: ____ inches
Depth to free water in pit: ____ inches
Depth to saturated soil: ____ inches

Check all that apply & explain below:
Stream, Lake or gage data: ____
Aerial photographs: ____ Other:

Other (explain):

Wetland hydrology present? yes no
Rationale for decision/Remarks:

SOILS

Map Unit Name (Series & Phase) Enum clay

Drainage Class mod well

Field observations confirm mapped type? (Yes) No

Taxonomy (subgroup) _____

Profile Description

Depth (inches)	Horizon	Matrix color (Munsell moist)	Mottle colors (Munsell moist)	Mottle abundance size & contrast	Texture, concretions, structure, etc.	Drawing of soil profile (match description)
0-11	A	10YR2/1.5			SL	
11-14	Bw	10YR3/3			fSL/SL	
14-18+	Bc	10YR4/2	10YR4/6	C2d	SL	

Hydric Soil Indicators: (check all that apply)

_____ Histosol
_____ Histic Epipedon
_____ Sulfidic Odor
_____ Aquic Moisture Regime
_____ Reducing Conditions
_____ Gleyed or Low-Chroma Colors
_____ Concretions
_____ High Organic Content in Surface Layer of Sandy Soils
_____ Organic Streaking in Sandy Soils
_____ Listed on Local Hydric Soils List
_____ Listed on National Hydric Soils List
_____ Other (ex plain in remarks)

Hydric soils present? yes (no)

Rationale for decision/Remarks:

Wetland Determination (circle)

Hydrophytic vegetation present? (yes) no
Hydric soils present? yes (no)
Wetland hydrology resent? yes (no)

Is the sampling point within a wetland? yes (no)

Rationale/Remarks:

NOTES:

DATA FORM 1 *(Revised)*
Routine Wetland Determination
(WA State Wetland Delineation Manual or
1987 Corps Wetland Delineation Manual)

Project/Site: Burbank Plat Applicant/owner: Don Burbank Investigator(s): AJB	Date: June 10/09 County: Pierce State: WA S/T/R: 3/19N/16E
Do Normal Circumstances exist on the site? yes no Is the site significantly disturbed (atypical situation)? yes no Is the area a potential Problem Area? yes no Explanation of atypical or problem area:	Community ID: Transect ID: Plot ID: TH 3

VEGETATION (For strata, indicate T = tree; S = shrub; H = herb; V = vine)

Dominant Plant Species	Stratum	% cover	Indicator	Dominant Plant Species	Stratum	% cover	Indicator
Red top	HE	60	FACW				
Dandelion	"	10	FACU				
Him blackberry	VI	10	"				

HYDROPHYTIC VEGETATION INDICATORS:

% of dominants OBL, FACW, & FAC ~~66~~ 33

Check all indicators that apply & explain below:

Visual observation of plant species growing in areas of prolonged inundation/saturation ____
Morphological adaptations ____
Technical Literature ____
Physiological/reproductive adaptations ____
Wetland plant database ____
Personal knowledge of regional plant communities ____
Other (explain) ____

Hydrophytic vegetation present? yes no
Rationale for decision/Remarks:

HYDROLOGY

Is it the growing season? yes no

Based on: _____ soil temp (record temp _____)
other (explain)

Dept. of inundation: ____ inches

Depth to free water in pit: ____ inches
Depth to saturated soil: ____ inches

Check all that apply & explain below:
Stream, Lake or gage data: ____
Aerial photographs: Other:

Water Marks: yes no on	Sediment Deposits: yes no
Drift Lines: yes no	Drainage Patterns: yes no
Oxidized Root (live roots) Channels <12 in. yes no	Local Soil Survey: yes no
FAC Neutral: yes no	Water-stained Leaves yes no
Other (explain):	

Wetland hydrology present? yes no
Rationale for decision/Remarks:

Map Unit Name (Series & Phase) Enum clay

Drainage Class mod well

Field observations confirm mapped type? Yes No

Taxonomy (subgroup) _____

Profile Description

Depth (inches)	Horizon	Matrix color (Munsell moist)	Mottle colors (Munsell moist)	Mottle abundance size & contrast	Texture, concretions, structure, etc.	Drawing of soil profile (match description)
0-10	A	10YR2/1.5			SiC	
10-14	Bw	10YR3/3			fSC	
14-18+	Bc	10YR4/2	10YR4/6	C2d	SC	

Hydric Soil Indicators: (check all that apply)

- _____ Histosol
- _____ Histic Epipedon
- _____ Sulfidic Odor
- _____ Aquic Moisture Regime
- _____ Reducing Conditions
- _____ Gleyed or Low-Chroma Colors
- _____ Concretions
- _____ High Organic Content in Surface Layer of Sandy Soils
- _____ Organic Streaking in Sandy Soils
- _____ Listed on Local Hydric Soils List
- _____ Listed on National Hydric Soils List
- _____ Other (ex plain in remarks)

Hydric soils present? yes no

Rationale for decision/Remarks:

Wetland Determination (circle)

Hydrophytic vegetation present? yes no

Hydric soils present? yes no

Wetland hydrology resent? yes no

Is the sampling point within a wetland? yes no

Rationale/Remarks:

NOTES:

September 17, 2008

Don Burbank
Burbank Investments, LLC
PO Box 1354
Buckley, WA 98321

RE: Boundary Line Adjustment, Coul Avenue
2006 Hearing Examiner's Decision

Dear Mr. Burbank:

The accompanying Hearing Examiner's decision from October 31, 2006 is relevant to the above referenced wetland determination. This Hearing Examiner's decision and the subject project have the commonality of being within the Buckley Soil Map Unit. An extensive investigation in 2005 and 2006 was undertaken to confirm that the Buckley soil series is not always hydric or a wetland. The Buckley map unit has large areas that are upland soil and it was mapped on the 1939 soil map.

Much of the Buckley map unit in King and Pierce Counties can be split into either the Buckley or the Enumclaw series, as was done on the 1939 soil survey. Those areas matching the characteristics of the Enumclaw Soil Series as described in the report are not hydric soils or wetlands. The accompanying Hearing Examiner's decision confirms these findings. Several days of testimony by several experts led the Examiner to conclude, specifically under Items 16, 17, 19, 20, 21, and 22 on pages 26, 27, and 28 that our interpretation is correct. This establishes a precedent under a quasi judicial determination, and lends legal support to the correctness of our position.

The accompanying report provides greater detail on the issue. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

AJ Bredberg
MS, CPSS, CPSC, PWS

3303 43rd St. NW • Gig Harbor, WA 98335, USA • 253.858.7055 • Fax: 253.858.2534 • ajb@wa.net

Pierce County
Office of the Pierce County Hearing Examiner
902 South 10th Street
Tacoma, Washington 98405
(253) 272-2206

STEPHEN K. CAUSSEAUX, JR.
Pierce County Hearing Examiner

October 31, 2006

Corliss Company, Inc.
P.O. Box 487
Sumner, WA 98390

RE: ADMINISTRATIVE APPEAL: CASE NO. AA5-05
CORLISS COMPANY, SITE DEVELOPMENT AND WETLAND VIOLATION

Dear Appellant:

Transmitted herewith is the Report and Decision of the Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,

STEPHEN K. CAUSSEAUX, JR.
Hearing Examiner

SKC/cka
cc: Parties of Record
PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY CODE ENFORCEMENT
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT

Printed on recycled paper

OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

CASE NO.: ADMINISTRATIVE APPEAL: CASE NO. AA5-05
CORLISS COMPANY, SITE DEVELOPMENT AND WETLAND VIOLATION

APPELLANT: Corliss Company, Inc.
P.O. Box 487
Sumner, WA 98390

AGENT: Buck and Gordon, LLP Attorneys at Law
Molly A. Lawrence and Brent Carson
2025 First Avenue, Ste. 500
Seattle, WA 98121-3140

SUMMARY OF REQUEST:

The appellant is appealing that the alleged grading activities required a site development permit and that any grading which may have occurred is exempt as an agricultural activity under PCC 17A.10.050(F). Further, the appellant is appealing the Departments assertions that any of the alleged grading activities occurred within a wetland or a wetland buffer. The parcel number subject to this appeal is 0520343031 and is currently zoned Reserve 5 (Rsv5). The site address is 20119 Old Sumner-Buckley Highway East, in Sec. 34, T20N, R5E, in Council District #1.

SUMMARY OF DECISION:

The appeal of T&S Properties and Scott Corliss of the violation alleging filling and grading in a wetland and wetland buffer is hereby granted. The appeal of T&S Properties and Scott Corliss of filling and grading without a site development permit is hereby denied.

PUBLIC HEARING:

After reviewing Planning and Land Services Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on June 12, 2006, at 9:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

EXHIBIT "1"	-	**Original staff report and attachments from Planning and Land Services**
EXHIBIT "2"	-	**Letter of Withdrawal from Carolyn Lake dated 1/25/06**
EXHIBIT "3"	-	**Notice of Withdrawal and Substitution dated 1/30/06**
EXHIBIT "4"	-	**Letter from Molly Lawrence dated 3/27/06**
EXHIBIT "5"	-	**Email from Molly Lawrence**
EXHIBIT "6"	-	**Memorandum from Hearing Examiner to Appellant and County**
EXHIBIT "7"	-	**Appellant's preliminary witness list**
EXHIBIT "8"	-	**County's preliminary witness list**
EXHIBIT "9"	-	**Appellant's final witness list**
EXHIBIT "10"	-	**County's final witness list**
EXHIBIT "11"	-	**Fax transmittal of witness resumes from Appellant**
EXHIBIT "12"	-	**Email from Molly Lawrence**
EXHIBIT "13"	-	**T&S Properties' final witness list correction**
EXHIBIT "14"	-	**Letter from Ms. Lawrence to Hearing Examiner dated 5/24/06**
EXHIBIT "15"	-	**Letter from Hearing Examiner to Ms. Lawrence**
EXHIBIT "16"	-	**Appellant's opening brief and attachments**
EXHIBIT "17"	-	**Pierce County Staff Report**
EXHIBIT "18"	-	**T&S Properties' rebuttal materials**
EXHIBIT "19"	-	**Mr. Bridgman's letter dated 6/2/06**
EXHIBIT "20"	-	**Photo display board with photos**
EXHIBIT "21"	-	**Photo display board previously marked E1-K**
EXHIBIT "22"	-	**Photo board labeled "Kelly Farm Estates"**
EXHIBIT "23"	-	**Bates-stamped copy of 5/8/05 Bredberg report**
EXHIBIT "24"	-	**Complete curriculum vitae for Dr. Busacca**
EXHIBIT "25"	-	**Document entitled "Munsell Color System"**
EXHIBIT "26"	-	**Photo labeled "North Cascades Park, 9/26/03"**
EXHIBIT "27"	-	**Photo labeled "North Cascades, 9/26/03"**
EXHIBIT "28"	-	**Photo labeled "7400, Kelly Farm"**
EXHIBIT "29"	-	**Photo labeled "DSCN 7371, TP67"**
EXHIBIT "30"	-	**Photo labeled "DSCN 7375, Kelly Farm, TP 67"**
EXHIBIT "31"	-	**10YR Munsell chart**

RON BRIDGMAN, professional engineer, appeared and introduced Exhibits "1" through "19". The photographs show that heavy equipment packed down the fill. He visited the site in March, 2005, due to other activities and noted the areas in the photograph vegetated. He estimates the applicant brought more material onto the site than allowed by than the 50 cubic yard exception. The applicant therefore should have obtained a permit, did not,

and therefore committed a violation. He introduced Exhibits "20" and "21", photoboards. The photos warranted an investigation and he used maps from the previous violations. They dug test holes, measured the depth of fill, and also tested the soil in the lower area. He estimates that 1,707 cubic yards of material were brought onto the site without a site development permit to include 322 cubic yards in the lower portion. These are not agricultural activities, maintenance, or repair. The fill was graded over and compacted. It is not located on parcels used for crops and zoned agriculture. It is not part of a corral or are used for the keeping of livestock, but is open to the main access of the residence. It is also open to the highway and was also previously used for grass. It is not within the 17A exemption. In March, 2004, appellant submitted an application to cover previously unauthorized grading. The County believes the applicant is attempting to develop the parcel into a residential subdivision.

SCOTT SISSONS, environmental biologist, appeared and testified that on February 27, 2001, the applicant submitted a wetland application for residential development of the site. A delineation report was prepared by Suzanne Bagshaw of LeRoy Surveyors who identified three areas of wetlands. Exhibit "22" is a photoboard showing Kelley Farms Estates. He referred to a copy of the Bagshaw report and testified that Carla Vincent confirmed the wetland boundaries, but disputed the category of wetland. Exhibit "21" is a site plan which also shows the delineation. Significant clearing took place as shown on Exhibit "21", the aerial photograph. On September 8, 2006, they obtained an administrative warrant, and on July 1, 2005, took photographs of the wetland areas which confirmed hydric soils in the area of Wetland B. 322 cubic yards of material were placed in this area which constitutes a violation of Title 18E. The area consists of a wetland based upon the soils samples. The imported materials were placed on the wetland areas. He bases his determination of wetland on a previous report by an outside biologist and his subsequent field visit.

SUZANNE BAGSHAW, wetland biologist now employed by Sheldon & Associates, performed a wetland delineation of the site when employed by LeRoy Surveyors, a development firm. In 2001 the client wanted to develop the site with residential lots. She performed a wetland delineation on the site and found that all parts of the extensive on-site wetlands were associated with Fennel Creek. She performed a delineation per DOE and Pierce County regulations based on the U.S. Army Corps Manual. She performed the delineation using standard methodology and noted recent significant disturbance as the land consisted of pasture. She made a site visit on three different days in January and noted part of the area as grazed pasture and part emergent wetland. A wetland requires hydrology or evidence thereof, hydric soils, and hydrophytic vegetation. She noted the likelihood of grazing in the wetland. She utilized the definitions in the manual to determine a wetland, and the definitions that matter are in the DOE manual. She evaluated the test holes, but also looked at other holes which are not listed in her report, but were used to establish the wetland boundary. The holes are not required to be dug to a depth of 16 inches, but she needed to check as low as 16 inches for hydrology. There are different

indicators for each requirement. All of the experts who visited the site agree that hydrophytic vegetation is located on the site. The question is whether hydrology is present in the growing season, and the manual refers to guideline letters from the Corps which state that if plants are growing, then it is the growing season. Examples include the swelling of buds and leaves starting to sprout. She noted standing free water at six inches and saturated soils to the surface. This hydrology needs to occur for only 12.5% of the year or 30 days. Standing water is not required, only saturated soils. She has not frequently encountered soils with water six inches below the surface in an upland area. The changes to the site render it non-recognizable from when she did her study. The roots were actively growing, and a preponderance of evidence showed that wetland indicators were present. She has taken classes, but is not a soil scientist. She can recognize hydric soils and has had more than enough education. Hydric soils have a sweep of characteristics. She looked at the soils immediately below the A horizon or ten inches whichever is shallower. She saw a chroma of two immediately below the A horizon. She noted the soil as Buckley loam based on the mapping. She noted on Page 6 of the A.J. Bredberg report that the applicant was repairing as opposed to installing new drainage. She made a site visit in May, 2006, and cannot recognize where she dug the original test holes. The vegetation was removed. The area off-site to the north is used for grazing and the western parts are used for hay growing. Drainage tile was added to the north and such will affect the hydrology of the on-site wetland. Natural circumstances existed in 2001. An atypical method was not called for. The off-site tiles will impact the hydrology. Determining the percentage of cover is done by assuming one is laying on the ground and looking up. It is common that the total percentage of coverage exceeds 100% due to the overlapping higher vegetation. The Bredberg profile occurred after the site was altered and her profile occurred before alteration. Pages 26 and 29 contain two descriptions of the Buckley soils which differ. Her report characterized the entire site, but she referred to only six holes. In following the manual procedure, she must take frequent samples.

MOLLY LAWRENCE, attorney at law representing the appellant, then questioned RON BRIDGMAN who responded as follows. He did not consider the use agriculturally related as it did not meet the exception. The plat map was prepared by a private citizen and not submitted as an application. The zoning is Reserve-5 and he is unsure if that is in a UGA zone or a maximum density zone, and does not know whether the Pierce County Code requires a .27 base density in the Reserve-5. He doesn't know if the applicant could develop the property in accordance with the plat map and is unsure about uses allowed in the R-5. He did not talk to Mr. Corliss prior to issuing the Stop Work Order. The amount of materials brought in do not meet the limitations of 17A and he saw no evidence of crops or the keeping of livestock in the area. He is not aware of any historical agricultural use of the property. He saw animals in the lower area, but not in the violation area. He did not examine the aerial photographs and is not aware of animals on the site four years ago. Agriculture is one exemption from the Site Development Code. Grazing and keeping of livestock is an exemption and the preparing of fields for livestock would be included. Blading over the dirt means taking the piles and leveling them off through compaction. He

found compacted fill which was not easy to dig. He does not know the source of the soil and it is unknown if it was topsoil or fill. The last time he saw the site, grass grew on it, but it is unknown when. The appellant could use the property for livestock if it blocked access to the balance of the property and the highway.

Upon questioning by AL ROSE, deputy prosecuting attorney, MR. BRIDGMAN testified that he has visited the site numerous times and saw horses once in possibly 2005. The area he noted then was in the lower pasture. A coral is adjacent to the larger fill area, but no fill occurred in the coral. It was structurally compacted by heavy equipment and would not have been used for crops.

BRENT CARSON, attorney at law representing the appellant, questioned SCOTT SISSONS who responded as follows. He is not a soils scientist and did not visit the site in 2001, but just reviewed the report. In 2005 he dug the test pits and Exhibit "18(10)" is his data. The fill is shown on "18(10)" and was placed in September, 2005. Without considering the fill on test pit number three, he dug four inches below and did not see saturated soils. The manual requires a depth of 16 inches. Mottles are hard to find as they are a spot or blotch of different color. They historically use mottling to determine saturated soils. The Munsell chart is used in determining wetland soils and he has been trained by the Corps over the years, but has had no specific courses. His Munsell chart was replaced the last time about two years ago. He periodically reads soil conditions to determine saturation. Mottling can be caused by rocks or fragments and he is aware of that happening. He is not aware of mottling caused by fire pits, a forest fire, or burn pile. He was on-site May, 2006, and has his field notes. The test pits were dug on May 19, 2006. Test pit 1 was dug by shovel, and test pits 2-4 by a backhoe. One can get a better vision of the soil in a backhoe hole. He made a determination in May, 2006, regarding hydric soils. The upper horizon of soil had no saturation. One test pit had seepage 3.5 feet from the bottom. Another test pit had seepage also. Test pit 2 had indicators of organic soils, but he would need to evaluate the characteristics of the soil. He noted indicators for hydric soils. A 10 YR 2-1 on the Munsell scale would indicate hydric soil. It is a darker color and one indicator of hydric soils. Some dark soils are not hydric such as Spanaway. The County did not perform a wetland delineation on the site, but was relying on the Bagshaw delineation. His recent investigation was not a delineation. The maintenance of drainage tiles is allowed, but not the expansion of tiles. He is aware of no County action regarding drainage work on any parcels in the area. Drainage ditch maintenance is exempt, but expansion is not allowed. If the tiles lay idle for awhile, the property owner could lose the right to use them. The maintenance of tiles could negatively impact the hydrology. The TP2 pit was within the LeRoy wetland, but hydric soils are not present. If he had questions about plants he would take a sample to the office for an expert to look at. If he had questions regarding the soil he could do the same, but he had sufficient training to make the call on this site. He uses the DOE manual, but also his soil experience.

Upon questioning by MR. ROSE, MR. SISSONS stated that extension of tiles is not

exempt. He looks for hydrology and vegetation, and a predominance of vegetation is a positive indicator. He has delineated wetlands for 14 to 15 years and has had experience with soils. The fill was eight to ten inches deep and the soils were compacted and difficult to dig. He has been on-site twice and in the general area about six times. He was on-site in September, 2005, and again in May, 2006. He is not surprised they didn't find hydrology in 2005. A hydrological study uses wells and pizometers to determine water levels and are usually done from October to April. The staff report used the Bagshaw report as evidence, and he also included the substantial subsequent report done in the area by the City of Bonney Lake. He spoke to Ms. Vincent and reviewed the A.J. Bredberg report. He believes a wetland exists on the site.

Upon questioning by MR. CARSON, MR. SISSONS stated that the area of the fill is a wetland, but that TP2 does not have hydric soils. He has no raw data from the September, 2005, or May, 2006, visit.

MR. CARSON then questioned DR. BAGSHAW who testified as follows. She is a wetland biologist and has training in plant physiology, but is not a soil scientist. Exhibit "17(1B)" is her wetland report. It provides a description of the site following her site visit and is an overview of what she found on site. Figure 4 came from the County's maps, but was not verified. It also came from the NWI Map and she is unsure whether the maps were verified. Concerning Page 8 of her report she did not go onto the parcel to the north so she did not perform direct sampling, but in her "over-the-fence" view, she noted the same types of plants and topography. She performed no delineation but has no reason to expect that the wetlands stopped. It would have taken a lot of extra time to prepare reports on the shallower holes and she documented a sufficient number of data points to determine a wetland. According to the DOE method, they do transects on parcels of greater than five acres, but they do have the flexibility to vary from the manual. She performed sampling to determine the delineation line. In determining the soil type she used the definitions in the DOE manual as shown on Page A-4 of Exhibit "18(4)". She did not measure soil temperatures as they do not use soil temperatures. At the time they had no controversy regarding the presence of a wetland as the County agreed. It is not standard practice to measure soil temperature. The test is whether plants are growing and they used the standard procedure. Standard practice is a better word. The standard practice is not to take soil temperatures. Page 28 of her report sets forth a lot about the growing season. She disagrees with the last paragraph on Page 29. She has performed about five wetland delineations using pizometers, but they are not common on an undisturbed site. According to Page 12 of her report the wetland delineation was obvious. If it is determined solely by obligate plants, it would be an obvious area. She didn't need to do other tests as she found both obligate plants and soils. However, the area of the fill was not dominated by obligate plants so it was not obvious. She referred to Page 33 of her report and data sheet three. Exhibits "21" and "22" provide similar markings for a wetland. TP3 in the northeast corner is not far from the grading area. One obligate species had 20% coverage. The 70% of FAC plants could be in either wetlands or uplands. These plants are frequently planted as

a pasture grass. She found a gradual transition zone and determined Buckley loam from the Pierce County soils book. On Page 16, Section 3.22, she has no personal knowledge, but observed the property off-site to include its vegetation. She also made observations from a road crossing the creek and from a wetland. The hydrology is furnished by runoff from the south based upon her on-site observation. Page 18 contains the hydrological analysis. No holes were present in 2000, and none were dug after January, 2001. The delineation occurred on one to two days. She was on-site May, 2006, and observed the test holes. She noted soil saturation, but none within 12 inches of the surface. The holes were dug after the site was altered and the wetland indicators included obligate plants. She noted only one specie at this pit. She noticed disturbance around the drainage ditch, but also knows that maintenance of drainage ditches are a farming practice. If it were a legal ditch, it could be inferred that it had an affect on the hydrology by increasing it if plugged. If it was unmaintained, depending on a variety of factors, it could affect the wetland boundaries. She noted a faint mottle which is a measure of contrast as mottling could be faint or distinct. She noted a soil type of 10 YR 5/1 in TP3 which is a yellow-red color. At the time of her delineation her client was not T&S, but a party named Svinth. However, she did send a copy of the wetland delineation to Corliss per a cover letter. She did not think the study was submitted to the County, but it actually was. The County generally doesn't accept delineations older than three years, but makes a case by case determination. The soil is mapped as Buckley loam and looked like it. It is a muck/organic loam with a high content of organics. She did not see sufficient evidence that it was not Buckley loam. There are mineral and organic soils which look like Buckley, but Buckley is primarily mineral with some organics. She referred to Page 26 of Exhibit "23". She did perform an organic analysis as she found a sufficient amount of mineral present. She performed a ribbon field test wherein she determined how long the soil ribbon extends before breaking. The Spanaway soil series has an A horizon the same as Buckley loam. She didn't just check the box after she found the soil consistent with Buckley. In saturated soils the spaces are filled with water as opposed to air. In hydric soils the actively growing root layer needs saturation. The characterization of saturation results in the obligate plants. The six locations fairly represent the site. Saturation was not present throughout the entire site.

Upon questioning by MR. ROSE, DR. BAGSHAW responded that she noted active growth occurring on Page 28 of her report. She determined whether the plants were growing as an indicator of hydrology. Upland islands can occur and they use the mosaic rule wherein if the upland is less than 50% of the total area, then all is included within the wetland. She then discussed the growing season calculations. She noted changes both off and on the site, but saw hydrophytic plants, and the appellant has stipulated to said finding. A six inch elevation difference can make a huge difference in vegetation. She referred to the Pierce County soil survey prepared by the USDA in February, 1979. An earlier section in the book was cited in the A.J. Bredberg report. Section 8A is the Buckley loam and talks about cropping. The soil survey was done to help farmers in determining what to plant and when to plant.

Upon questioning by MR. CARSON, DR. BAGSHAW testified that no evidence exists today as to what was growing on the site. The growing season does not happen instantaneously. It is not the case that the growing season stops if the air drops below freezing after a warm spell. If the temperature is below freezing all day on January 11th, then the growing season might be reconsidered. She believes that Buckley loam is found at a higher elevation and closer to the mountains. The NRCS defines the growing season at the Buckley weather station. They don't use an average temperature for the growing season, and she chose not to use the temperature as she doesn't need it. Whether or not viable growth is occurring is the standard. Bonney Lake does not have a 365 day growing season, but it varies. A wetland delineation is done when the client needs it. They can do one at anytime. Her report reflects no mosaic at this location, but since one hole did have upland soils, it could have a mosaic. The size of the area delineated measured greater than five acres. They did not follow the exact procedure for five acres of greater. Of the sites she has visited lately, some are saturated and some are not.

Appearing was DR. ALLEN BUSACCA who in response to questions by Mr. Carson testified as to his qualifications and that he is a pedologist. A pedologist conducts soil analysis as opposed to a geologist which conducts earth analysis. He is involved in teaching and research at WSU. He also researches around the world and teaches the use of the Munsell chart. The Munsell chart is a perception of color which is an individual trait and can vary depending on whether color is evaluated early or late during the day or on a rainy day. These factors can affect how we perceive color. The appellant requested him to give an opinion regarding the type of soil on the site, but was never asked to provide an opinion regarding Buckley loam. Pierce County soils surveys started in the 1800s and 1900s for use in agriculture. They also addressed uses such as forestry, grazing, and urban development and became more refined and detailed. Soil types were created and now more than 20,000 named series exist throughout the country. Even though the soil is mapped as Buckley, the chance exists of finding other types. Exhibit "25" is the Munsell color system which he created and which has three elements to the system. The first, a technical definition, determines the distance on the chart from one sample to another. It is a mistake to use "abundance" in this definition. The model simply means a different color from the base color. We have become more specific and now evaluate color spots and interpret how they got there. The spots can get into the soil in many different ways, one of which is the appearance of weathered, volcanic rock which came down in a mudflow. It resembles softened rock turned to clay. In one instance he dug through an orange weathered rock which clung to the shovel. Another example is iron reorganizing in the soil. A process called podzolization spodosols are gray and red/yellow in different areas and have nothing to do with oxidation reduction. He has spent ten years researching the origin of soils in the Cascades to include work in the eastern slopes. Exhibits "26" and "27" are photographs he took in the North Cascades National Park and Exhibits "28"- "30 are photographs that he took on November 10, 2005, at the farm. The things he saw surprised and excited him because in the uplands and flat surfaces are a whole host of features found in the Buckley soil. There are reasons

for iron other than redox. Iron in the soil is colored gray to red. The term redoximorphic equals oxidation reduction. The North Cascades has spodosols which are well drained on 70% to 80% slopes. They have never been saturated but show dramatic patterns of gray and red. They support conifer vegetation and have moderate rainfall. He now sees the same action in lower, warmer, drier climates. He referred to the blue pen shown on Exhibit "21" and Exhibit "28". It is formed by glacial material and then covered by other materials. It is very coarse, sandy material under a Douglas fir which is well drained soil, seldom if ever, saturated. He has seen similar photographs consistent with the North Cascades in other areas. The process is competing with coloring in the soil. They are well drained soils the same as the North Cascades. Dr. Bagshaw made mistakes in her field observations as she cannot check both Buckley soil and other types. The soils can't be both. The soils on the site are not a Buckley series. The black surface doesn't mean a histic epipedon. It is not an indication of ponding or standing water. Large areas of Puget Sound have the Spanaway series which consists of glacial material in the upland portion the same as Buckley. It never had perched water and doesn't relate to standing water. Where volcanic ash is in the soil and it consists of 60% glassy material, it is possible for the decay of organic matter to form molecular compounds slightly soluble in water. They form with glass to create the same humus as in Spanaway soils. They are located in excessively drained settings. He then discussed the definitions of soils and their meanings. Dr. Bagshaw found that the soils on site consist of muck and organic loam. Muck is an organic soil. She also determined the soil is 10YR 3/2. He was on site in May, 2006, and saw soil which had Buckley features with one or two key differences. The black A horizon was 10YR 3/3 or 4/3, four to six inches below the black horizon which is not typical. This type of soil would not form with a water table. This soil developed a gray color with red spots and he would not characterize it as hydric. Eight to ten points had cambin just under the top. Below that are gray soils and indications of water, but below the critical wetland area. He observed weathered rock fragments and some evidence of redoximorphic features. But in TP2, Mr. Sissons did not see the same feature. He referred to the soil as "Buckley like" although a variety of soil is under the farm field. It is a different thing from soil classifications. He has not seen soils consistent with the checklist. He would need 50+ things to check on which would include the parent material not evident here. In the last year alone he has examined and taken photographs of more than 200 backhoe pits. He reviewed about ten pits last fall and six in 2006. It is not simple to characterize the soil on this site. He is not sure he has ever seen a more complex site on such a small parcel. We have a confluence of glaciers, mudflows, ash, and Fennel Creek. Much is going on at the site. He looked at 50 large excavations 10 to 15 feet deep and it took all of these observations plus his experience to determine what caused the soils. Six hand dug soil holes might do the job in other areas, but not here. He and Mr. Sissons disagree on the reading of color. It is not possible to reduce the differences to zero and we won't find the same color all the time. He is not surprised in the difference in color evaluation between he and Mr. Sissons. Exhibit "31" is the 10 YR chart and consists of two pages.

The hearing was concluded.

The hearing was opened on August 28, 2006, at 9:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

EXHIBIT "32" - Photographs
EXHIBIT "33" - Field Notes
EXHIBIT "34" - Lab report with cover letter

DR. ALAN BUSACCA appeared and upon questioning by MR. ROSE testified that he visited the site three times: in October, 2005; May 10, 2005, with staff; and on June 6, 2005, prior to the hearing. He introduced Exhibit "33" his notes from his October 6, 2005, site visit. He walked and drove the property and looked at land forms as he was originally asked to help establish the history and geologic issues on the site. He noted backhoe holes opened and he took photographs and notes. He estimates about ten holes open. He did not prepare a map and did not see one. He can relate what is going on on the site based upon his 30 years experience. He did not visit the site in the context of litigation, but just to provide an understanding of the site and its origin. He was not told of the fill, but would have observed it without being told. In his May 6th notes he did not note fill, but it is important to know what happened in the recent past. He has no experience as a wetland or plant biologist. He is aware of micro-climes as well as the scientific method as a way of doing things. One does not disturb an area before beginning an investigation. A spodosol sometimes is a forest soil. Some are well drained and some poorly drained. He has seen wet soils probably in ten different settings in the world to include the coastal plain of North Carolina, Maryland, North Puget Sound, and the Olympic Peninsula. They often have organic components and can vary a lot. They have three areas, a litter layer, a mineral A horizon where partially decayed matter is located at the top of mineral soil, and matter dissolved by water which has moved down through the soil. He has seen soils where the black soil exists and others do not. In the deep soil profiles he has seen an anaerobic condition which means that water fills the pours and they have no oxygen. He can determine this with instruments in the ground. One can also see water by observation. He referred to the soil as Buckley-like as it is formed from volcanic mud flow which refers to the "like". It is part of the valley fill, but not part of the uplands which are 20 feet above that. In the areas he studied he found volcanic parent material. On May 6th he visited the site with Pierce County staff and did not see any hydric soils. He saw spots of color which are referred to as mottles, but exclude the redoximorphic features. The issue is the point of origin. He does not know in which test pits he found the colors.

Upon questioning by MR. CARSON, DR. BUSACCA testified that the purpose of his retention was to assist in the geomorphology of the farm. It is a complicated site and he was asked to assist in its interpretation. His retention was not related to this hearing, and he was never asked to produce a comprehensive report. He examined pits in the far

western part of the parcel and went along the creek. Two sites are to the east of the buildings near the road. This is the highest point of the property and it then begins to drop off. The third set is to the east and northeast corner, but none of the sampling was in the disputed area. He does not judge the soils as hydric soils as they are better drained. In anaerobic soils oxygen is available and leads to chemical reaction on various oxides. This forms the brown and red colors. When oxygen is more dominant, then one has brown, red, and orange colors. This is what he observed. The soils were black above and brown and red below. Here the key factor is the spots of color and whether they are redoximorphic conditions, or whether they have nothing to do with wetness. It is a critical scientific question as to what caused the color.

Upon questioning by MR. ROSE, he testified that his conclusions are based on a field study, and it is his professional conclusion that spodosols are located all over the site including the area in question. He was contacted by Herman Gentry to look at the site, but does not know the date. Part of his job at WSU is to offer technical assistance and he acted in that capacity.

Upon questioning by MR. CARSON, DR. BUSACCA identified hydric soils in photograph DSCN 7378. Water is in the pit and it is weeping out at 12 inches. He can see the reddish/orange color at the 12 inch level at the tape.

CARLA VINCENT, County wetlands biologist, appeared and upon questioning by MR. CARSON testified that she reviews about 300 wetland reports per year and if she disagrees provides a letter. Sometimes she disagrees other times not. The topography and soils here suggest wetlands. No delineation of the farm occurred, as the County relied upon the LeRoy report for the violation. She does not believe transects are necessary as they dug a sufficient number of holes, but the manual does require transects of a site this size. She conducted a site visit on April 10, 2006, and does have her field notes. Even though they were requested, they were not provided. She also made a visit on May 15, 2006, when the appellant's experts were in the field. The experts wanted to talk, but the County chose not to engage in conversation, but to take their own look at the site. She saw no evidence of hydrology until about three below the surface. The Buckley variant soil is dark and has a black layer to 10 inches and then a gray layer. She has seen some with the brown layer below which she calls a variant. The section is better drained than the true Buckley. She would need to have more hydrology monitoring to determine wetlands and believes the monitoring an excellent idea.

Upon questioning by MR. ROSE, MS. VINCENT referred to the DOE Manual and areas greater than five acres. One establishes a baseline and the use of transects to create a grid system. The section is entitled "Areas Greater than Five Acres". She looked at all the pits on her May 6th visit and saw hydric indicators. In general the hydric indicators increased as one moved north and west. She visited the site in 2000 and 2001 and since then it has had a lot of disturbance. Fill was placed over the A horizon and a lot of

vegetation was removed to include trees and undergrowth. Extensive drainage tiles are on the parcel to the north and east. Very nice tiling is to the north and could affect the hydrology.

Upon questioning by MR. CARSON, MS. VINCENT stated that the County has brought no enforcement action on the tile installation. She then discussed several pages of the DOE Manual and confirmed that the five acre procedure was not followed by Dr. Bagshaw. To date the County has not had a soil scientist on the site.

Upon questioning by MR. ROSE, MS. VINCENT stated that Mr. Corliss' previous attorney, Carolyn Lake, would not allow any access to the site.

SCOTT CORLISS appeared and testified that his father bought part of the Kelley Farm 30 years ago and recently bought the balance about five years ago. The area outlined in green reflects the balance of the purchase. T&S Properties is a land holding entity and owns raw land and land improved with warehouse buildings. The Kelley Farm is an historical property and the sign says it began operation in 1864. He replaced the sign. In 2001 when they bought the parcel, both old homes were ignored and occupied by renters. Mr. Svinth had lost interest in the property and allowed it to become rundown. The homes needed roofs and paint, and the land was also ignored and engulfed with blackberries. Photograph 1C shows 40 acres of strawberries which he rents to Spooner Farms. 1D is a turf mower which is used by the polo players on ten acres. They mow the field three times a week. Exhibit "1E" is the Spooner tractors which they use for 25 acres of pumpkin. They had a rodeo livestock contractor keeping animals on the site for about one and one-half years, but the fences could not hold them and the bulls got out. They have now repaired about 1,000 linear feet of fence. They will have about 50 heifers on the property from the Burt Haugen dairy. He will pasture them there. He can keep them there as long as he wants. His dad kept cattle there years ago and fenced the property. They also have horses for the polo games on the property and a couple of years ago he told them they could play for ten years. They won't do anything with the property during that time. They did site work on the property as they brought valley top soil onto the upper portion east of the farmhouse. He estimates they imported about 300 cubic yards of soil. They obtained the soil from the Ford dealership in Sumner and then bladed and compacted it. The upper area is nothing but boulders and large rocks as shown in Photographs 2C, D, E, and F. The photos show an abundance of rock and no top soil. It is hard to grow grass and their plan is to improve it for pasture for cows and horses. They lightly smooth it out for animals and mowing. The soils were not brought to the site for the purpose of development as they would have to remove it. Top soils come in at the end of development and are removed before development. Exhibit "21" is a plat drawing prepared by Abbey Road. The previous owner had asked to have the property annexed into Bonney Lake and the County wanted to know the concept of the use. No engineering was performed. The zoning of the property is Agriculture and R10. They can't develop the property due to zoning and its location outside of the UGA.

Upon questioning by MR. ROSE, MR. CORLISS responded that he was not sure about the UGA and that the land is more valuable for development then pasture, but he can't build homes right now. He retained Carl Halsan to get the property annexed into Bonney Lake, but didn't recall Mr. Halsan telling him that it was placed in the UGA and then taken back out. 265 homes are shown on the drawing, but he did not follow the process too closely as Mr. Halsan handled it. He did not serve on the Fennel Creek Commission, but Mr. Halsan did. In 2003, Mr. Halsan represented them in many areas to include the Target Store in Bonney Lake and Sunrise. The strawberry fields are north of the green sections and extend to the creek. His dad still owns the parcel. The polo field has a ditch on the east side and a fence on the west side of the ten acres. He took the photographs in the spring of 2006. The building shown in 2A was used as a bunkhouse before he owned the property, and 2B is an ice house as it has three foot thick walls. Photo 3F is a barn which is used for hay and tractor storage. Parcel 031 is bounded in green. They brought in 300 yards for the entire site and he questions the 1,700 cubic yards. Either amount is more than allowed. He does not know the number of trucks and feels they could have hauled it in one day if all the time was added up. The green areas also supported cattle and the pasture was sufficient to allow the cattle to graze. The high property is all rocks and boulders and then drops to the valley below. One cannot see it now, but the area of the dump trucks was rough to mow. It was used as a pasture before he bought it. He was not aware of Mr. Svinth's development plans prior to purchase. He built 965 feet of fence and worked on it sporadically for a while. He has not received significant income from the cattle or property. He has removed vegetation since the purchase, as in 2003 a windstorm knocked down trees and he removed them. He did remove a lot of blackberries when he bought the property which is reflected in the 2003 photographs. Patches of bare dirt are shown on the aerial photographs, and a dozer bladed the vegetation out.

Upon questioning by MR. CARSON, MR. CORLISS testified that he works with his dad and brother and manages the business. They own about 3,000 acres in Pierce County. His dad installed the drainage tiles in the strawberries. They have kept horses there for the past couple of years.

Upon questioning by MR. ROSE, MR. CORLISS testified that the tiles were installed 30 years ago and more tiles to the north of the green line in 2001. They installed no tiles in the pumpkin fields and they left the hole with the older tile exposed.

RICHARD HERRIMAN appeared and testified that he is familiar with Pierce County soils and has served as a consultant for 16 years, 14 of which involved lower Puget Sound. He started work on the Kelley Creek site a couple of years ago and was asked to look at the soils and dig pits throughout the site to include those discussed today. He personally observed 30 to 40 pits. It is important to know the geologic history to understand what formed the horizons or soil layers. Soils are not a nice uniform unit and we need to understand the age of a landscape. The lower Puget Sound has very complex soils. The

area has received mudflows from Mt. Rainier and a lot of ice extended from Olympia to the North Pole. The ice advanced and retreated a number of times and then it all melted about 13,000 years ago which was a significant event. The large rocks found on the site are glacial drift and were strewn about by water flowing in all directions. The melting water downcut and formed significant canyons to include San Francisco Bay which is 900 feet deep. Here, on this hill, Fennel Creek is a major drainage and mud flows were located beneath the ice. Victor Falls ends the creek and the hanging valley is not seen often. The Kelley Creek site is fascinating as we have all kinds of relationships with soils. Now the ice is gone, but climatic events at the edge of the ice front to include cold and warm wind pick up bare soil so we have windblown features. We also have volcanic ash blown in from Glacier Peak and Mt. Mazama eruptions which were very large events. The result is silt and fertile soils. The soil profile was taken above the creek on a stream terrace and is several thousand years old. But below the glacial terrace the area is not a plateau, but an undulating plateau, and a challenge to manage. The upper area was formed 13,000 years ago and the flatter area was formed by streams and other factors. He referred to the soil provide in pit TP2. One needs a pit three to five feet deep so he can look all around the pit. Years ago trees were everywhere and farmers removed them. They used dynamite to blow the stumps and occasionally blew a crater and then had to refill it. We must recognize past soil disturbances, and it is difficult to do so if we only go to 12 inches. He wants pits four feet deep so that he knows the bottom horizon is not disturbed. The A horizon is generally three to 11 inches, but varies, and there could be more than one horizon. He also noted a hoof pan at the 1 to 1.5 foot level which was hard and compacted. Water moves vertically where it can, and the windblown upper level can cause water to move laterally. We can have a plow pan at the base of the A horizon. The soil is loaded with iron and maganese. The B horizon here is the key. It is the cambic horizon. He dug several pits and all show the same. They look at the horizon all the way down. They start at the top and go to the bottom and determine what to call it. They look at each horizon and then sample and then interpret what they are looking at. The weathering process has nothing to do with redoximorphic. Color can be caused by fire pits, as when something is burned the ground becomes fired. Burning incorporates red features into the soils. He noted no water table near the surface.

Upon questioning by MR. ROSE, Mr. Herriman testified that he does not recall seeing any test pit data. The County also determined this area not hydric. They determined that the soil was part of a wetland and that is why he is here. The area is flat in the area of the test, but it is not flat up to the highway. It is highly variable. He serves the private sector as a consultant and works for all kinds of clients. The majority of the time landowners retain him for some activity that requires management. He is in the soils business. He was hired a couple of years go and took samples recently. He was on the site in October, 2005, and throughout the year. He thinks the Osceola mudflow occurred several thousand years ago. He has seen wetlands ten feet above a stream terrace, but they are not directly influenced by the stream, as they have some kind of restrictive layer to cause the water to perch. At TP2 he saw no water during the year. If a perched water table is dug through by a

backhoe, one could see the water spill into the pit.

Upon questioning by MR. CARSON, he testified that he did not observe perched water layers. He found a weak plow pan which would not create a perched water table. Upon digging a pit in a wetland, one sees water coming out of the hole from the sides. This is the reason why the horizon is important as we find the true level.

DR. STEVEN HOLZHEY appeared and testified that he visited the Kelley Farm in December, 2005, for the purpose of viewing soils he had not seen before. He and Mr. Herriman walked the green perimeter and strawberry fields, and despite all of the puddles, did not find one saturated soil above 12 inches. He had the same experience in January, 2006, and went back March 7th and March 28th and became more involved with the soils at that time. He reviewed the LeRoy report and its statement that the soils contained a histic epipedon. They performed a lab analysis on TP2 which is Exhibit "34". He disagrees with the LeRoy evaluation as the soil is not close to a histic epipedon. If so, it would be lighter than water, but a clod of this soil simply sinks. He took a spade of soil and determined it is not Buckley loam. It goes from A to BG and has not undergone oxidation reduction in the upper portions. The County people were there in the pits, but would not talk. He wanted to exchange information to see if they had problems with his interpretation. The brown layer is related to iron oxide that doesn't form in water. He saw no redox features. The soil is not Buckley since it has no redox and the water table is lower. The Buckley has no brown horizon; other nearby soils do. The A horizon is formed from organic matter plus volcanic rocks. It could be black, but would have less carbon. It meets the definition for hydric, but since it is excessively drained, it is not hydric. One cannot tell from a hole ten to 11 inches deep whether a soil is hydric. Such would eliminate all non-black soils. Concerning distinct versus faint mottling, we can have a modeling pattern, but not oxidation. Faint means barely observable and only one color chip difference in the Munsell chart. Distinct might be two to four value chips. Prominent is a greater contrast than distinct. He found no wetland within 300 feet of the alleged grading and never saw saturated soils within 12 inches of the surface. His conclusion is a dark surface soil with brown horizon beneath. There are stump holes so variations can be found, but the dominate soil is the black over brown.

Upon questioning by MR. ROSE, DR. HOLZHEY testified that no one told him of the compaction and fill and it might change his opinion if the vegetation were removed. A hoof pan was present so he is unsure if the compaction would change anything. In evaluating plants and compacted earth, the grass pushes its roots down which will take water, but he is unsure if under trees a hoof pan is present. The water might run off faster, but it depends on the condition of the vegetation. Nothing grows under blackberries. In TP2 the wetland is not delineated. It is unknown if it is the same pit.

Upon questioning by MR. CARSON, DR. HOLZHEY responded that we can have hydric soil that is excessively drained. We would have no brown layer if we had an anaerobic

condition. He has never seen that before. He has dug beside puddles and the soil is saturated only above the hoof pan for two to three inches. Below that it is not. He dug into the soil, pulled out a plug, broke it open, and found no saturation.

A.J. BREDBERG appeared and testified that he has worked on Kelley Farms site for two years. He contacted Drs. Busacca and Holzhey due to the complexity of the site. He referred to the White River School District project in 1993 where he found the same B horizon. He had an Enumclaw series which had the same brown layer. He called it the Buckley Variant, and it is not called Buckley-like. He determined the brown layer meant no wetlands. The Corps of Engineers now recognizes the brown layer. He would have done a comprehensive evaluation on this site, but the LeRoy report did not. The growing season is defined by the soil temperature reaching a certain number. Daytime temperatures fluctuate and we need to look at the depth. He determines growing season by the use of a soil thermometer. You can now slide it in and get a reading in a couple of minutes. We also have the Puyallup and Buckley weather stations and need to look at the long term data. We move in and out of the growing season due to weather variations. The growing season ends when we go beneath the temperatures, and it begins again when the temperatures go up and stay up. One starts the water table monitoring during the growing season. He dug a 12 inch hole and a four to five inch hole and 20 to 50 holes in total. He also used shovel holes and auger holes. He did several hundred. Exhibit "32" shows the wooden drain tile that was installed pre-1930s. TP4 and TP5 are within a swale which is an intersected tile. A hydric pit is in the bottom of the ditch. He believes that they were within a few feet of TP3 and also located TP4 outside of Wetland B. They found consistent non-hydric soil. They found the brown layer so it is not a hydric soil. They observed backhoe pits and knew it was a tough site. You must get a test pit with a backhoe. LeRoy did six shovel test holes which is inadequate and would cause them to miss the hydric soil. The standard approach is not adequate for the site as it has complex soils. More holes would have been dug if a transect was done. It would have allowed them to extend farther into the field and pick it up. The soil colors are hard to read and can be different if looked at during different times of day. One would not find a brown layer in a pit if one were in a wetland. In TP3 the County determined hydric soils. He looked at an area where trees destroyed the B horizon. The photographs show different sides of the pit and it is an aberration. A layer of sandy loam is above the mudflow. He referred to the red clay tile. There are four sets of tile, one in the northwest corner of the area outlined in green and the cedar planks installed pre World War II. The red clay tile is at the upper right hand corner and was used from World War II until the late 1960s. It was about 100 feet southeast from the red x on Exhibit "21". It is on a herring bone pattern. The black plastic tile was installed in the 1970s and is in the strawberry and polo field area. It was replaced in 2001 with additional plastic and he saw old pieces in the field. Concerning squishy ground, he found a hoof pan approximately three inches from the surface. After water gets through the hoof pan, it goes straight to the water table. He found several locations in the pasture and dug in all months of the year. Besides the puddling it has no saturation. He digs a hole and lets it sit for a while. The water in the hoof pan will fill the hole, and he will see the water

running down the soils, and he then assesses saturation. A test pit will show the true status. Much hydrology came up to the brown layer, but not above. It generally came to about 18 inches and occasionally to 14 inches at the bottom of the brown layer. The brown layer is not a hydric soil per the DOE Manual. The LeRoy report is a standard routine study looking at Buckley soil which is a hydric soil. No hydric soils exist within 300 feet of the fill area except the blown tree areas and the ditches.

The hearing was concluded.

The hearing was opened on August 28, 2006, at 9:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

Upon questioning by MR. ROSE, MR. BREDBERG testified that his first two times to the site occurred several months apart and that he could have had conversations with Carla Vincent in July, 2003, which means that it was more than three years ago. He started his investigation in the area in green and eventually it covered the entire site. He probably reviewed the entire site for two years. The floor of the valley gently slopes to the west and he noted three landforms. The water flows down to the valley floor which is a floodplain. The slope is from about 521 feet to 500 feet. The buildings are at the top and then the parcel slopes to the lower terraces. He is familiar with the 1997 DOE Manual which contains a set of rules. Within the rules one must make interpretations. He lets the data tell him what is going on and does not have preconceived ideas. He relies on the manual, but in order to be prudent, he relies on more than the manual. He reviewed the Bagshaw report which describes significant vegetation. When he saw the site, the shrubs were gone. He knows the vegetation has changed on the site since 2001 as the data sheets showed vegetation, but he does not know how much was removed. He disagrees with the growing season determined by plants growing as such method contains a lot of variables such as the valley temperature. Many factors influence hydrology and the DOE Manual lists many. The type and amount of vegetation affects hydrology. Vegetation affects hydrology. Vegetation can keep the ground covered and reduce evaporation. A compacted surface can have more runoff than a plant covered surface. He performed an informal survey of the color drain tile and found hydrophytic plants. He disagrees with the opinion regarding oxidized roots. The vegetation changed due to farming, and the soil has not changed except for tree removal, plowing, and other farming activities. He acknowledges the pasture, but it is his opinion that biologists are qualified to assess pasture. He knows of the previous examples of missing drainage systems, etc. He agrees with the type of plant community, but the site should have been treated as an atypical situation. No top soil was in the wetland area per the LeRoy report. He can evaluate the pasture as a routine site due to his knowledge of the drainage, etc. He didn't find the cedar planking by accident. He saw a depression and dug. They did hit the red clay tile by accident, but he was not on the site. With the drainage in place, no wetlands are in the area. His observations in the field show a herringbone or other type of drainage pattern. They had the cedar plank and red

tile and he can trace those drainages. He can also see where the soil was dug 30 years ago. Areas of failure have occurred in the system. In 2001 they replaced a tile with a newer line. The red clay was 40 years old, plugged, and had no clear outlet at the creek. The cedar planking was carrying only a trickle of water. A transect would have protected Dr. Bagshaw from a wrong call and would have helped establish a baseline. On Page 6 of his report, he states that no wetland report should be prepared until all of the drainage tile is repaired. He dug hundreds of holes and put some on the map, but not all. He located many holes on a map and all were dug by backhoe. He noted about 50 on a series of maps which he found representative of the area. There were some aberrations, but he didn't list them on the map. The holes that Dr. Busacca looked at were dug a day or two earlier.

Upon questioning by MR. CARSON, MR. BREDBERG testified that he assumes wetlands exist on every site, and that he must prove none do. He presumed that the farm had wetlands and he saw what he thought were Buckley soils. He thought the site contained wetlands for a year before he changed his mind. He initially missed the brown layer in the holes. The water stain test is valid only in a forested condition. The manual refers to this indicator as a hydrology indicator and forested non-emergent wetlands. The LeRoy report doesn't say if the predominant plants were growing. Some plants grow in December and some plants grow in January. He saw the water in two holes and at three feet water ran into the hole. The weather was wet well into May and he had hydrology in other areas, but no hydrology in TP2 or TP3. He would have had water within two feet. Farms can maintain a drainage system, but farmers need to be cautious in Pierce County as they need to contact staff before making a repair. Holes can remain open a day or two and one can wet the hole to get an accurate color. The major factors in the soil would not change with exposure. A bluish color changes within minutes. His report focuses on the green area as opposed to the 200 plus acres. He intended only to address the violation area and no data that he has seen changes his opinion. The intent of the May 6th site visit was to meet with the County.

Upon questioning by MR. ROSE, MR BREDBERG testified that about two years ago he met with Mr. Corliss and Mr. Sissons and offered to meet on site. It could have been the spring of 2005. The dirt was brought to the site in July, 2005. An engineer was at the meeting, and at that time he thought they were near a wetland. The lower area of the fill is 2,000 square feet and the top area is one half of to one acre. The water will run off faster. No wetland hydrology exists in the area in question. He believes a hoof pan on the surface caused the wetness and hydrology can change. The lower drain won't affect the drainage due to the mudflows. It is two to three feet deep.

LISA PALLAZZI appeared, presented her credentials and testified that wetland hydrology must be no more than 12 inches from the surface, and the soils and vegetation must be hydrophytic. She starts with the definition. Almost every word in the definition is defined. She then discussed the hydric soil criteria which includes organic soils and the water table at or near the surface. It must be ponded 14 to 21 days or frequently flooded. We use

indicators to support the hydric soil determination. They are indicators and not requirements. Eight indicators are set forth in the manual and include organic soils, rotten egg smell, the duration of hydrology, measurement of anaerobic soil depth, soil color which is the sixth of eight in decreasing likelihood, iron and maganese. Soils in the green area on the map have the characteristics of Buckley soil and she refers to them as Buckley-ish. The soils are part of the Osceola mudflow with alluvial cap and ash cap and are not true Buckley soils. She received Dr. Busacca's photographs and 7367 looks like Buckley soil. The perched water soil is a confining layer that prohibits infiltration. 7367 shows a perched table. The surface layer is finer and hangs onto the water longer. It could have several water tables at the bottom of the upper black layer. The color patterns are gray and red. Podzolization allows iron and acid to be transported down. Chemical tests can determine if pod occurs. Soil color is undependable, but is used a lot. If we use color we should do it with a very fresh pit. At the site when pits are dug, color can change in a matter of minutes. She is uncomfortable using colors if the pit has been open awhile. She reviewed the Bagshaw report and has no reason to disbelieve what she describes. The report has no chances for errors than any other delineation. The hydrology of the site has changed which is the reason for the difference in hydrology now. Water was present in 2001 and then the drainage system was replaced in the summer of 2001. We can verify hydrology by the use of pizometers in the ground and wells.

Upon questioning by MR. CARSON, MS. PALLAZZI testified that the County contacted her three to four weeks prior to the June hearing, but she has never been on the site. She would never perform a wetland delineation using photographs. She agreed that the site has no organic soils per the lab report. She agrees no histic epipedon is occurring in test pit 3 and that LeRoy's report was incorrect. No one noted a rotten egg smell. A hydrology test was not done as shown in the fourth indicator. The fifth indicator was not done, and the sixth indicator, the soil color, has the been focus of the hearing. The soils are mapped as Buckley, but she can't make that determination. The only thing at issue is the color. The Buckley is a difficult and hard soil to interpret. It is hard to delineate. Photograph O239 is TP2 and she notes black soil to 12 inches and then a brown soil four inches thick. Exhibit "18-11" shows the famous brown layer. She is aware of the White River site and the determination that the soil was not Buckley due to the brown surface between the glade and the mottled soil. It is a better drained version of the Buckley and not a hydric soil. Mr. Bredberg made the determination on the White River site and it was confirmed by Mr. Small. Where we find the brown layer we possibly have non-hydric soils, but it is not certain. She looked at the soil model list and saw exactly what has already been described. She believes the hydrology is at 18 inches and the soils are not hydric and therefore there is no wetland. If she found the materials she would dig more holes. She remembers the testimony that the brown layer ran under the soil on the site. Dr. Bagshaw observed hydrology at six inches in the middle of winter and was on-site one to two times. After March 1st the standard growing season starts. It is conservative and the plant growing could be different. She then discussed how the 14 day test came about. The DOE Manual converts it to 30 days, but it is not well defined. She has observed hoof pans in Nisqually

soils at dairy farms in a four inch layer of black soil. Underneath, the soils were well drained. The Bredberg report is accurate as described, and she has no information to contradict it. Dr. Holzhey testified that he saw no hydrology in the winter which convinced her for the first time that hydrology did not exist. She has no evidence that Dr. Bagshaw misread the hydrology of the holes and feels there was wetland hydrology in 2001. She notes less brown layer in photo 7367 and assumes it is at a different place than the others. She is not aware that the samples were taken immediately after the pits were open on May 6th. Her concern was the October 5th pits. She has no problems with the data sheets in either wetland report.

Upon questioning by MR. ROSE, MS. PAZZATTI testified that she declined to make a comparison with the White River site due to the distance away. The soils have a lot of variability. She would not expect such a substantial drop in hydrology with the reinstatement of drainage ditches.

Upon questioning by MR. CARSON, MS. PAZZATTI testified that she has worked on the maintenance of drainage tiles wherein the water table became so high they couldn't farm. They did the maintenance and she saw the drop of the water table. It dropped about six inches in the early part of the year. On May 6th we had a three foot water table and the table is highest in February. She can't speculate as to how high it was in January, 2006.

DR. BUSACCA reappeared and testified that photo 7367 was taken of a hole on the west side of the property outside of the green zone half way to the west property line. He has observed colors in the soil pits and saw them change color only one time. It was in a dredging operation when they brought the soils up from the bottom of a bay. In 20 minutes he could watch them go from blue to brown. It is the only time he saw the soils change color. He observed the test pits on different days and did not see a color change.

No one spoke further in this matter and the Examiner took the matter under advisement. The hearing was concluded.

NOTE: A complete record of this hearing is available in the office of Pierce County Planning and Land Services.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, viewed the property, heard testimony, and taken this matter under advisement.

2. This request is exempt from review under SEPA.

3. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. Notice of the date and time of hearing was published two (2) weeks prior to the hearing in the official County newspaper.

4. T&S Properties and Scott Corliss (Appellant) appeal the issuance of a Stop Work Order (Cease and Desist) issued by the Pierce County Development Engineering Section of Pierce County Planning and Land Services (PALS) on September 8, 2005. Appellant also appeals the issuance of a Correction Notice/Cease and Desist Order issued by PALS on September 20, 2005. The Correction Notice/Cease and Desist Order incorporates the Stop Work Order and alleges violations of Title 17A of the Pierce County Code (PCC) entitled "Construction and Infrastructure Regulations – Site Development and Stormwater Drainage; Title 17A PCC, Pierce County Stormwater Management and Site Development Manual; and Title 18E PCC, Development Regulations – Critical Areas". The description of the violations as set forth in the Correction Notice (Ex. 1I) are as follows:

   A. Unpermitted development, i.e. earthwork/grading consisting of greater than 250 cubic yards of deposited earth materials and/or materials on Parcel No. 0520343031. Based upon on-site field examination the estimated quantity of materials deposited is 1,700 cubic yards. The majority of the materials were deposited in the upland portion of the site east of the main access into the Kelley Farm home. It is believed that these materials were deposited between June 30, 2005, and July 9, 2005, based upon statements and photos provided by private citizens living in the vicinity of the subject property.

   B. Unpermitted deposit of earth materials/material within regulated wetlands and/or wetland buffers. Based upon on-site field examination it is estimated that of the total 1,700 cubic yards deposited at the site, 300 cubic yards of material was placed on regulated wetlands and/or wetland buffers in the lowland portion of the site northwesterly of the existing Kelley Farm home. Again, it is believed that these materials were deposited between June 30, 2005, and July 9, 2005, based upon statements and photos provided by private citizens living in the proximity of the subject property.

   Appellant timely filed an appeal on October 4, 2005. For the reasons set forth hereinafter, unpermitted deposit of earth materials within regulated wetlands and/or wetland buffers did not occur on the site. However, unpermitted development to include deposit of materials and earthwork/grading of greater than 250 cubic yards occurred on the site.

5. The parcel(s) subject to this appeal are part of the Kelley Farm established in 1864

in the Fennel Creek Valley. The farm is presently abutted on the west, north, and south by the City of Bonney Lake. Approximately 30 years ago the Corliss family purchased the portion of the Kelley Farm located along Fennel Creek commencing near Kelley Lake Road on the east and extending west and south to the crossing of the creek by the Old Sumner-Buckley Highway. In 2001 Appellant acquired the balance of the Kelley Lake Farm which consists of the parcels outlined in green on Exhibit "21". Historical uses of the farm are limited to agriculture and include the growing of hops, an apple orchard, growing of fruits and vegetables, and dairy cattle. (Scott Corliss testimony).

6. Prior to the 2001 acquisition the previous owner, Michael Svinth, a member of the Kelley family, had "ignored" both the land and structures and had allowed the structures to lapse into disrepair. Significant stands of blackberry vines covered the area, and renters and trespassers had extensively damaged the buildings. Following acquisition, the Corliss family cleaned the site and restored the buildings as shown in the photographs (Exhibit "16-1").

SITE DEVELOPMENT PERMIT

7. Between July 1, 2005, and July 12, 2005, Pierce County received complaints from citizens residing in the area that significant amounts of fill dirt were being deposited in two areas on "parcel 3031", the area outlined in green on Exhibit "21", and acquired by the Appellant in 2001. Based upon said complaints, Ron Bridgman, PALS development engineer, conducted an on-site investigation pursuant to an Administrative Search Warrant obtained September 9, 2005, from the Pierce County District Court. Mr. Bridgman found newly imported material graded and compacted on two areas of the parcel. He dug 29 test holes, measured the depth of the fill, and calculated the total amount of material brought to the site at approximately 1,707 cubic yards. Approximately 1,400 cubic yards of material were deposited in the upper portion of the site near the home, outbuildings, and the road. Approximately 322 yards were deposited in the lower portion of the site near areas previously identified as wetlands. Mr. Bridgman found the material tightly packed and difficult to dig. He concluded that the material was brought to the site for the purpose of development and not for normal agricultural uses, and therefore constituted a violation of the PCC. (Bridgman testimony).

8. PCC sections applicable to the site development violation include the following:

   A. Section 17A.10.070(D) PCC reads: Unless fully exempt from these regulations, no person, party, firm, corporation, or entity shall do any grading, filling, clearing, excavating, or ditching, or create any impervious surface, or any development or redevelopment activity unless the work is in accordance with a valid site development permit from the County issued pursuant to the

provisions of these regulations.

B. Exemptions from the site development permit requirement include the following:

F. Agricultural activities except in sensitive and/or critical areas.

G. Agricultural activities in sensitive and/or critical areas that commenced prior to June, 1998.

J. The removal, deposit, or displacement of not more than a total of 50 cubic yards of material throughout the life of a development from its existing condition....

C. Section 17A.10.060(B) PCC defines "agricultural activities" as follows:

B. "Agricultural activities" means the normal actions associated with the production of crops such as: plowing, cultivating, minor drainage and harvesting, and/or raising or keeping of livestock, including operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems, and normal operation, maintenance, and repair of existing serviceable agricultural structures, facilities, or improved areas....(emphasis supplied).

Appellant contends that it imported approximately 300 cubic yards of top soil to the site and spread it over an existing pasture to cover rocks and improve its growing capacity. Appellant asserts it did not import the material for the purpose of development and that its activities qualify for an agricultural exemption as a normal farm operation. For the reasons set forth hereinafter, Appellant's activities exceed "normal actions" associated with agriculture and do not qualify for an exemption.

9. In January, 2001, Michael Svinth, owner of parcel no. 3031, engaged LeRoy Surveyors and Engineers, Inc., to assist him in developing the portion of the Kelley Farm which he owned. As part of the development evaluation, Dr. Suzanne Bagshaw, a wetland biologist employed by LeRoy, conducted a wetland delineation of the parcel, prepared a wetland analysis report in January, 2001, and submitted said report to Mr. Svinth in February, 2001. (Bagshaw testimony). The description of the proposed development of the site found in Section 1.3 of Dr. Bagshaw's report reads:

> The applicant proposes to develop and subdivide the 61.84 acre site into 12 lots for single family residences. A significant portion of the property will be left in a tract designated for future

development.

A proposed preliminary plat map shows a cul-de-sac road extending into the site from the Old Sumner-Buckley Highway and providing access to 12 lots (Figure 6 to Exhibit "17"). Dr. Bagshaw also sent a copy of the wetlands analysis report to Mr. Scott Corliss or his company (Bagshaw testimony, June 12th hearing).

10. Following Appellant's acquisition of the farm, additional site development plans were prepared in February, 2004, for a single family residential development consisting of 265 lots and known as Oseola Ridge. Said proposal encompassed virtually the entire Kelley Farm property to include the portion acquired 30 years ago (Exhibit "21"). The Oseola Ridge site plan was prepared by Abbey Road, a developer representative. At approximately the same time, the Corliss family retained Carl Halsan, a property development consultant, to assist in having the Kelley Farm annexed into the City of Bonney Lake. Mr. Halsan not only worked for the annexation, but also sat on the Fennel Creek Commission which would make recommendations to legislative bodies regarding development of properties along Fennel Creek. (Corliss testimony). Despite Mr. Corliss' testimony to the contrary, the above actions show that the appellant attempted to develop the property into a residential subdivision.

11. Mr. Corliss attempts to dispute development activities by testifying that he imported only 300 cubic yards of material to the site (Bridgman measured 1707 cubic yards); was unaware of the Svinth proposal (Bagshaw sent him a copy); and that Carl Halsan worked on many of their projects and he couldn't remember specifically his role in the Kelley Farm property (sat on Fennel Creek Commission). Mr. Corliss also testified that no engineering occurred on the Oseola Estates project. However, AJ Bredberg, his wetlands expert, testified that in the spring of 2005 he attended a meeting regarding development of the farm and that the Abbey Road engineer attended the meeting. One purpose of the meeting was to specifically identify the location of the wetlands, and the meeting occurred only a few months before the importation of the material. Concerning the amount of soil imported to the site, Mr. Bridgman made specific measurements and calculations to determine the 1,707 cubic yards. On cross-examination Mr. Corliss testified that he could "dig out" the truck records which would tell for sure the number of truckloads, but that he did not know the number of trucks involved in the operation. Mr. Corliss has known of the 1707 cubic yards allegation for more than a year, and even though he testified that he had records of the number of truck trips, he failed to produce them. The Examiner finds Mr. Bridgman's testimony the most credible.

12. Mr. Corliss testified that he brought soils to the site to improve the pasture in the upper portions of the parcel near the road. However, in his testimony he discussed the history of livestock pastured along the Sumner-Buckley Highway; that different

farmers in the area have rented or leased the pasture land; that fences existed all over the property; and that his dad kept cattle there 20 years ago. However, he later testified that the whole upper area where he deposited the fill was "nothing but boulders and rocks; the size of basketballs up to the size of Volkswagens...There is no – there is no top soil up in that area, it is nothing but rocks". (Pages 74-78 August 28th transcription).

13. The fill and grade does qualify for an agricultural exemption as it does not constitute "normal actions associated with the production of crops..." as required by Section 17A.10.060(B) PCC.

FILLING IN WETLAND OR WETLAND BUFFER

14. According to all experts who testified, to meet the definition of "wetland" a parcel must have hydric soils, hydrology, and hydrophytic vegetation. The parties agree that hydrophytic vegetation exists in the area of the lowland fill, but while the County asserts that hydric soils and hydrology are also present, the appellant disputes said assertion.

15. No Pierce County wetland biologist conducted a wetland delineation of the site. Pierce County relied upon the wetland analysis prepared by Dr. Bagshaw in February, 2001 (Exhibit "17") to determine that Appellant had deposited fill in a wetland/buffer area (Vincent testimony). Appellant presented highly qualified soil scientists who conducted significant investigations of the on-site soils and whose conclusions contradicted Dr. Bagshaw's finding of hydric soils and wetland hydrology. No Pierce County soil science or soil scientist engaged by the County visited the site.

16. Dr. Bagshaw identified the soils in the area of the fill and in the lowest area of Parcel No. 3031 as "Buckley", a hydric soil. Dr. Bagshaw based her determination on USDA and NRCS soil surveys which mapped the site as having Buckley soils. She also dug a number of test pits with a spade to a depth of about 14 inches. In the test pit closest to the fill, TP3, Dr. Bagshaw testified that she found hydric soils. Dr. Bagshaw also found freestanding water at six inches and a soil saturated surface. Dr. Bagshaw performed a routine wetland analysis, finding that the parcel consisted of undisturbed, grazed pasture, and she saw nothing to challenge the USDA and NRCS soil surveys. However, subsequent soil studies performed by the Appellant's experts over the past few years have determined that the Kelley Farm has a most complex soil regime, and that without a significant number of holes dug by backhoes, the true nature of the soil cannot be determined.

17. The Examiner accepts in total the testimony of Dr. Allen Busacca, Mr. Richard Herriman, and Dr. C. Steven Holzhey, and relevant portions of the testimony of A.J.

Bredberg. Said testimony establishes that soils in the area of the fill do not meet the definition of hydric soils. The upper layer (A horizon) does not contain 20% organic matter and is therefore not an organic soil (Exhibit "34"). The coloring of the soils is not caused by aerobic conditions which are necessary for hydric soils, but are caused by weathered volcanic rock, podzolization, or spodosols. (Busacca testimony) Furthermore, beneath the approximate 12 inch thick, black, A horizon is a BW cambic horizon, a brown layer which is not indicative of a hydric soil. By contrast, hydric soils would have a BG or gley horizon (a gray colored soil) below the black A horizon. Also, plant roots in the soils are clean and unstained which is inconsistent with redoximorphic features. Such is also indicative of non-hydric soils and the lack of a water table or hydrology. The soils contain so much iron and maganese that if anaerobic conditions existed even for a short period, it would be evident. Redoximorphic features would be evident, but in the area of the fill, no such features were found. In Test Pit 2 nearest the fill, Mr. Herriman observed no evidence of a water table (testimony of Herriman).

18. The saturated soils observed by Dr. Bagshaw were likely caused by plow pans or hoof pans which allow the water to puddle and restrict its infiltration into the ground. Repair of the farm's drainage tiles subsequent to Dr. Bagshaw's visit also lowered the high water table which she observed. Upon digging through the plow pan found on the site subsequent to the drain tile repair, the experts found undisturbed soils below and no wetland hydrology (Holzhey testimony).

19. The same or similar type of soil was previously encountered on a site owned by the White River School District between Bonney Lake and Buckley. Mr. Bredberg and Mr. Phillip Small, a soils scientist, determined that the soil was not Buckley as it had the BW cambic horizon. Pierce County agreed that the soil was non-hydric and therefore determined the site had no wetlands (Bredberg testimony).

20. Dr. Bagshaw found in her investigation that plants were growing on January 11, 2001, and therefore determined that said date was within the growing season. Since it was within the growing season, she could determine the presence of wetland hydrology. The weather records at McChord Air Force Base show that on January 7, 2001, and again on January 16, 2001, the highs for the day were 25 degrees and the lows at night were 20 degrees (testimony of Bredberg). It would not seem appropriate to determine the growing season by a warm period in January, as such periods are common throughout the winter and generally followed by cold spells. A more accurate determination of the growing season can be made by determining soil temperature or by growing season.

21. The County's soil science expert did not challenge the findings of no hydric soils. She pointed out in her testimony that many of the factors discussed by the Appellant's experts are "indicators" of hydric soils and not a determination that

hydric soils, exist or don't exist. She testified that soil scientists use eight indicators to assist in the determination of such soils. In the present case, seven of the eight indicators either support non-hydric soils or were not evaluated due to the lack of testing. The eighth indicator, color, is the least reliable due to the significant amount of interpretation required. Hydric soils do not exist in the area of the fill, and therefore no wetlands or buffers were impacted.

22. While the absence of hydric soils conclusively establishes the absence of wetlands in the fill area, substantial testimony addressed the presence/absence of wetland hydrology. It appears from Dr. Bagshaw's testimony that a high winter water table existed in January, 2001, but that the hydrology no longer existed in 2005/2006. During the intervening period the appellant repaired drainage tiles in the northern and eastern areas of the site which affected the water table at the fill location. However, Pierce County brought no enforcement action regarding the drainage tile work nor did it present any evidence of violations of County ordinances. Therefore, the Examiner assumes that all drainage tile work complied with the agricultural exemption. Thus, the area of the fill in addition to having no hydric soils also has no wetland hydrology.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.

2. This matter consists of an administrative appeal, and Section 1.22.090(G) PCC, a portion of the Hearing Examiner Code, provides that parties appealing a decision of an administrative official have the burden of presenting evidence necessary to show said decision clearly erroneous. However, the present action is in the nature of an enforcement action, and therefore Pierce County has the burden of proof to demonstrate by a preponderance of the evidence that a violation of the PCC occurred. In the present case, Pierce County has established by a preponderance of the evidence that the appellant did not obtain a site development permit for unpermitted earthwork and grading. However, Pierce County has not established by a preponderance of the evidence that unpermitted earthwork or grading occurred within a wetland or wetland buffer.

3. The filling and grading occurring on the site exceeded "agricultural activities" as defined by PCC Section 17A.10.060(B) as it exceeded "normal actions associated with agriculture", and likely was done in conjunction with a development plan for the property.

DECISION:

The appeal of T&S Properties and Scott Corliss of the violation alleging filling and grading in a wetland and wetland buffer is hereby granted. The appeal of T&S Properties and Scott Corliss of filling and grading without a site development permit is hereby denied.

ORDERED this 31st day of October, 2006.

STEPHEN K. CAUSSEAUX, JR.
Hearing Examiner

TRANSMITTED this 31st day of October, 2006, to the following:

APPELLANT: Corliss Company, Inc.
P.O. Box 487
Sumner, WA 98390

AGENT: Buck and Gordon, LLP Attorneys at Law
Molly A. Lawrence and Brent Carson
2025 First Avenue, Ste. 500
Seattle, WA 98121-3140

OTHERS:

Fred and Winona Jacobsen
9100 - 189th Avenue Ct. E.
Bonney Lake, WA 98390

A.J. Bredberg
3303 – 43rd St. NW
Gig Harbor, WA 98335

C. Steven Holzhey
6037 NE Whale Dancer Ct.
Suquamish, WA 98392

Carl Halsan
P.O. Box 1447
Gig Harbor, WA 98335

Jerry Taylor
4311 – 128th St. E.
Tacoma, WA 98446

Dick Herriman
661 N. Dorian Dr.
Ontaillo, Oregon 97914

Alan Busacca
12148 N. 75th St.
Longmont, CO 80503

Jim Mitchell
3616 N. Union
Tacoma, WA 98407

Sheri Cox

PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT

CASE NO: ADMINISTRATIVE APPEAL: CASE NO. AA5-05 CORLISS COMPANY, SITE DEVELOPMENT AND WETLAND VIOLATION

NOTICE

1. **RECONSIDERATION**: Any aggrieved party or person affected by the decision of the Examiner may file with the Department of Planning and Land Services a written request for reconsideration including appropriate filing fees within seven (7) working days in accordance with the requirements set forth in Section 1.22.130 of the Pierce County Code.

2. **APPEAL OF EXAMINER'S DECISION**: The final decision by the Examiner may be appealed in accordance with Ch. 36.70C RCW.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.