

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	
	)	
Wilder Construction	)	
	)	SUPT-97-1987, SUPT-99-0301 &
	)	
For Approval of two Special Use Permits	)	AAPL-97-1987
And an Administrative Appeal	)	
	)	
Operating Engineers Local Union 612	)	
And REBOUND, Appellants	)	
_____	)	

**SUMMARY OF DECISION**

The requests for 1) A five year review of all conditions from previously issued Special Use Permits (SUPT-99-0301); and 2) Amendments to conditions of a previously issued Special Use Permit in order to excavate gravel deposits at depths greater than 30 feet, expansion of the hours of the asphalt plant operation for public works projects, and approval of storage of more than 2,000 gallons liquid propane gas (SUPT-97-1987) are APPROVED, with conditions.

The Administrative Appeal of Thurston County's issuance of a SEPA Mitigated Determination of NonSignificance is DENIED. The Hearing Examiner declines to rule on the merits of the Administrative Appeal because the Appellants lack standing to bring such an action.

**SUMMARY OF RECORD**

**Request**

Wilder Construction (Applicant) requested: 1) A five year review of all conditions from previously issued Special Use Permits (SUPT-99-0301); and 2) Amendments to conditions of a previously issued Special Use Permit in order to excavate gravel deposits at depths greater than 30 feet, expansion of the hours of the asphalt plant operation for public works projects, and approval of storage of more than 2,000 gallons liquid propane gas (SUPT-97-1987). The subject property is an existing mining operation located at 3200 - 113th Avenue SW, Olympia, Washington. Tax Parcel Number 21728320000.

A Mitigated Determination of NonSignificance was issued for the proposed Special Use Permits. The Operating Engineers Local Union 612 and REBOUND (Appellants) filed an appeal on April 8, 1999. The Appellants requested that the MDNS be withdrawn and/or vacated and a Determination of Significance be issued.

**Hearing Date**

An open record hearing on the special use permit requests and administrative appeal was held before the Hearing Examiner of Thurston County on May 17, 1999. The hearing was continued to May 26, 1999.

**Testimony**

At the hearing the following individuals presented testimony under oath:

Jeff Fancher, Thurston County Prosecuting Attorney's Office  
Linda Whitcher, Development Services  
Tom Miller, Development Services  
Cynthia Wilson, Development Services  
Bob Mead, Environmental Health Department  
Al Quiocho, Environmental Health Department  
Greg McElroy, Attorney for Applicant  
Tom Dikeman, Representative for Applicant  
Dimitri Iglitzin, Attorney for Appellant  
Jeff Soth  
John Williams  
David Hamilton  
Jan-Orjan Westerlund  
Ron Roberts  
Kenneth Martig  
Ed Taylor  
Dave Craig  
George Van Buskirk  
Monte Deeds  
Patricia Kubicek  
Don March  
Eric Hansen  
Mike Krautkramer  
Dan Bruck  
Otto W. Herman, Jr., REBOUND member

At the hearing the County was represented by Jeff Fancher esq, Prosecuting Attorney Office; the Appellant was represented by Dimitri Iglitzin esq.; and, the Applicant was represented by Greg McElroy esq.

**Exhibits**

At the hearing the following exhibits were admitted:

Exhibits attached to SUPT/SUPT-99-0301 staff report:

EXHIBIT 1 Development Services Report

Attachment a Notice of Hearing

Attachment b Staff Report Written by Tom Miller, Fire Marshal

Attachment c Applications and Supporting Information

Attachment d Agency Responses

Attachment e Public Comments

Attachment f Previous Decision

Exhibit Attached to AAPL-97-1987 staff report:

EXHIBIT 1 Development Services Report

Attachment a Notice of Hearing

Attachment b Administrative Appeal

Attachment c March 18, 1999 Mitigated Determination of NonSignificance

Attachment d Pre-Hearing Order

Attachment e Appellant's List of Witnesses

Attachment f Applicant's List of Witnesses and Response to Appellant's Issues of Appeal

Attachment g Environmental Checklist

Attachment h February 10, 1998 Letter from Schwerin Campbell Barnard LLP

Attachment i April 1, 1999 Letter from Schwerin Campbell Barnard LLP

Attachment j March 31, 1999 and February 9, 1998 Letters from Martig Engineering

Attachment k March 23, 1999 Letter from Department of Fish and Wildlife

Attachment l April 8, 1999 Letter from Robinson & Noble, Inc.

Attachment m March 30, 1999 Memorandum from Environmental Health  
Department

Attachment n April 12, 1999 Letter from Department of Fish and Wildlife

Attachment o May 5, 1999 Memorandum from Environmental Health  
Department

Attachment p May 6, 1999, March 30, 1999 and February 11, 1999  
Memorandum from Environmental Health Department

Attachment q October 28, 1994 Mitigated Determination of NonSignificance

Exhibits submitted at hearing, exhibits to all cases: SUPT/AAPL-97-1987 and SUPT-99-0301:

EXHIBIT 2 Photograph of Notice of Public Hearing on this Hearing

EXHIBIT 3 May 6, 1999 Letter from Loyd and Susan Hanna

EXHIBIT 4 May 12, 1999 Letter from Roger Musgrove

EXHIBIT 5 May 4, 1999 Letter from Robert and Carol Ogden

EXHIBIT 6 May 6, 1999 Letter from Margaret Hanna

EXHIBIT 7 May 13, 1999 Letter from Margaret Ward

EXHIBIT 8 Letter from Charles Heelnea

EXHIBIT 9 Aerial Photograph Submitted by the Applicant

EXHIBIT 10 Notice of Public Hearing on LPG Storage Tank

EXHIBIT 11 November 6, 1997 Letter and Attachments to Tom Dikeman from Robinson &  
Noble, Inc.

EXHIBIT 12 The Drilling Logs from the Piezometer

EXHIBIT 13 Department of Ecology Water Well Report

EXHIBIT 14 March 3, 1998 Memorandum from Bob Mead

EXHIBIT 15 May 24, 1999 Letter from REBOUND

EXHIBIT 16 May 22, 1999 Letter from Don Waterhouse

EXHIBIT 17 County's Sign Posted on Site Noticing Public Hearing, Including Propane Tank and Continuation of Hearing

EXHIBIT 18 November 20, 1998 Letter from BRC Acoustics

EXHIBIT 19 August 21, 1998 Letter from BRC Acoustics

EXHIBIT 20 Eric Hansen's Resume

*The Hearing Examiner also considered:*

Post Hearing Brief of Appellants

Supplemental Brief of Appellants and Attachments

Post Hearing Brief of Applicant

Post Hearing Brief of Thurston County Development Services

Upon consideration of the testimony given, exhibits submitted at the open record hearing, and the written arguments filed by Applicant, Appellants, and Thurston County Development Services, the following Findings and Conclusions are entered by the Hearing Examiner:

## **FINDINGS AND CONCLUSIONS**

### **Findings on the SEPA Appeal**

1. The Applicant operates a sand, gravel, and asphalt business (mining operation) on a 69-acre parcel located at 3200 - 113<sup>th</sup> Avenue SW, Olympia, Washington. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.* The legal description of the subject property is a portion of the west half of the southwest quarter, Section 28, Township 17 North, Range 2 West, W.M. Thurston County, Assessor Tax Parcel No. 21728320000. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*
2. Pursuant to SEPA, Thurston County was designated as the lead agency for review of environmental impacts that may result from the proposed expansion. On March 17, 1999, the County issued a Mitigated Determination of NonSignificance (MDNS) for the project which became final on April 1, 1999. The MDNS included five conditions of approval pertaining to stormwater management; compliance with conditions of the previously approved permits; and, noise limits at night. *Exhibit 1 (AAPL-97-1987), Attachment c.* An appeal of the MDNS was filed on April 8, 1999.
3. The Appellants submitted numerous procedural and factual errors as the basis of their appeal. The Appellants make the following allegations:

- a) Procedural Errors: That the Applicant is incrementally expanding the operation and acting to remove previously required conditions of approval. The County erred in evaluating the modifications individually, and the incremental approach to environmental review is a violation of, and inimical to, the State Environmental Policy Act and the County SEPA code.
- b) Factual Errors: The threshold determination issued by the County that concludes the proposed Special Use Permit would not have a probable significant adverse impact upon the environment is in error. The Appellants make the following specific contentions:
- i. The proposed SUP will result in release of sedimentation to Bloom's Ditch. The deepening of the mining pit will increase the connection between the upper and lower aquifers near the pit. This will cause the rapid dissemination of contaminants, including elevated levels of iron, manganese, turbidity and metals, from the upper aquifer into the lower aquifer. The lower aquifer provides drinking water for numerous well. The Appellants also contend that the MDNS did not evaluate the potential for contamination from spills.
  - ii. Salmonid species and the Olympic mudminnow use Bloom's Ditch and its unnamed tributary. Coho salmon possess critical habitat in the project's affected surface waters. Salmon spawning areas are as close as 1,000 feet to the site, and possibly closer, and there is the potential for adverse impacts to these species.
  - iii. The allowable noise levels will be exceeded.
  - iv. The lighting necessary to allow evening and weekend work will create a new adverse impact to the neighborhood, including to neighbors, birds and wildlife. This new impact was not adequately considered. *Exhibit 1 (AAPL-97-1987), Attachment b.*
4. The County responded to the issues on appeal and submitted that the MDNS, as conditioned, will not have a probable significant adverse impact, and that the MDNS should be upheld.<sup>1</sup>
5. At the public hearing, the Applicant objected to the Appeal and contended the Appellants lacked standing to bring the appeal. *McElroy Testimony*. Pursuant to *TCC 17.09.160(A)(2)*, any person aggrieved by a threshold determination may appeal, provided these persons submit written comments during the comment period required by *WAC 197-11-340*. The Appellants contend that members of their organizations are aggrieved by the decision and thereby the organizations have standing to appeal. *Exhibit 1 (AAPL-97-1987), Attachment b.*
6. The Appellant Operating Engineers Local Union 612 is an AFL-CIO affiliated labor organization and a member of REBOUND and is located within the geographic jurisdiction in Thurston

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<sup>1</sup> The Applicant raised the issue of whether the Appellants have standing (as discussed in this decision). Because the Hearings Examiner determined that the Appellants do not have standing, the issues of the appeal are not discussed in greater detail. If, upon appeal, the Appellants are determined to have standing, the appeal shall be remanded to the Hearings Examiner to issue additional findings.

County. At the hearing it was stated that many members of the Operating Engineers reside near the vicinity of the subject property but none was presented as witness. REBOUND is a statewide non-profit organization comprised of workers in the building and construction industry, some of whom live, work, and seek recreation in the vicinity of the mining operation. *Exhibit 1(AAPL-97-1987), Attachment b.* REBOUND is an organization that reviews both “environmental and socio-economic issues.” *Testimony of Otto W. Herman.*

7. One member of Operating Engineers Local 612, Robert L. Smith, submitted an affidavit in support of the appeal. In the affidavit it was stated that Mr. Smith resides “near” the Applicant’s gravel extraction facility at 3147 107<sup>th</sup> Ave. SW<sup>2</sup> in Olympia and that he has “serious concerns about the environmental impacts of the Wilder Proposal.” *Affidavit of Robert L. Smith.* No specific environmental issues were identified in the document.
8. On May 22, 1999, Don Waterhouse submitted a letter to Thurston County Development Services. In the letter, Mr. Waterhouse stated he is a member of REBOUND and lives a half mile from the Applicant’s facility. Mr. Waterhouse also contended in this letter that he was authorized to communicate a statement from an individual named Marc Sousie regarding the SUP Application. Neither Mr. Waterhouse nor Mr. Sousie appeared at either hearing. No affidavits or declarations were submitted by either person. *Exhibit 1 (AAPL-97-1987), Staff Report.* No specific environmental issues were identified by Mr. Waterhouse.
9. The Appellants submitted a supplemental statement from Jeff Soth, a research analyst for REBOUND, alleging on behalf of unnamed “numerous REBOUND members” certain SEPA violations. No specific impacts to particular pieces of property owned by REBOUND or its members were mentioned in this statement. The witness acknowledged that the Appellants and the Applicant had different positions relating to labor activities concerning the mining operation. *Supplemental Statement and Testimony of Jeff Soth.* Other than the exhibits and testimony mentioned in Findings 4 - 6 no other persons potentially impacted by the proposal were identified.

## **Conclusions of Law on the Administrative Appeal**

### **I. Burden of Establishing Standing**

1. The Washington State Legislature does not give standing to “simply anyone who is dissatisfied with the outcome of the rule-making process.” *Allan v. Univ. of Washington*, 92 Wn. App. 31, 35-36. (1998). The burden of establishing standing is on the person or organization seeking it. *Id.*, at 35, *citing Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). In this administrative appeal, REBOUND and Local 612 have the burden to establish standing.

### **II. Test for Standing in Administrative Appeals of SEPA Determinations**

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<sup>2</sup> Notice is taken by the Hearing Examiner that Mr. Smith’s property is approximately 3-4 miles from the subject property and is separated by Interstate 5.

#### A. Standing of REBOUND and Local 612 as Organizations, and their individual members

1. The Appellants rely on the Washington Supreme Court's decision in Save a Valuable Environment (SAVE) v. City of Bothell, 89 Wn. 2d 862, 867 (1978) for its argument in favor of standing. Based on the evidence submitted by Appellants in this proceeding, it fails to meet the standards set forth in SAVE and other applicable case law.
2. According to the SAVE court, an organization alleging standing must establish that (1) the interest sought to be protected must fall within the "zone of interests to be protected by the statute" and (2) the challenged action has caused "injury in fact," which means the organization or one of its members "will be specifically and perceptibly harmed by the action." Id., at 866, citing United States v. S.C.R.A.P., 412 U.S. 669 (1973). The Appellants fail to establish either prong of this test.
3. In order to lie within the protected "zone of interests," the individual's or organization's interest must be related to SEPA's "broad questions of environmental impact." Harris v. Pierce County, 84 Wn. App. 222, 231 (1996) (citing Snohomish County Property Rights Alliance v. Snohomish County, 76 Wn. App. 44, 52 (1994)). Economic interests are not within the zone of interests protected by SEPA. Id.
4. In the instant case neither Appellant has produced sufficient evidence that it has interests relating to environmental impact, other than vague assertions of concern about "environment and socio-economic issues." These assertions do not meet the legal standard. "An organization whose interest is only speculative or indirect may not maintain an action." SAVE, 89 Wn. 2d at 867, (citing Warth v. Seldin, 422 U.S. 490, 514 (1975)).
5. The Appellants must show an "injury in fact," either to itself or an individual member. "[W]hen a person alleges a threatened injury, as opposed to an existing injury, he or she must show an immediate, concrete, and specific injury to him or herself... *If the injury is merely conjectural or hypothetical, there can be no standing.*" Trepanier v. City of Everett, 64 Wn. App. 380, 383 (1992)(emphasis added) (citing Roshan v. Smith, 615 F. Supp. 901, 906 (D.D.C. 1985)). Affidavits "must collectively demonstrate sufficient evidentiary facts to indicate an injury in fact..." Concerned Olympia Residents v. Olympia, 33 Wn. App. 677, 683 (1983).
6. The Appellants have made no showing of injury in fact, and produced no evidence, either by testimony in person or affidavit that would demonstrate an immediate, concrete, and specific injury. A statement from a member who lives "nearby" the subject property speculating on possible negative consequences to the proposal is legally insufficient, as is Mr. Waterhouse's letter. Bare assertions, such as these, that a proposal will likely create serious adverse impacts on a surrounding geographical area without factual support in the record, must fail. Trepanier, 64 Wn. App. at 384.
7. The Appeal fails because of lack of standing of the Appellant.



## **General Findings**

1. The Applicant operates a sand, gravel, and asphalt business (mining operation) on a 69-acre parcel located at 3200 113<sup>th</sup> Avenue SW, Olympia, Washington. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.* The legal description of the subject property is a portion of the west half of the southwest quarter, Section 28, Township 17 North, Range 2 West, W.M. Thurston County, Assessor Tax Parcel No. 21728320000. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*
2. The subject property is zoned Rural Residential/Resource - One Dwelling Unit per Five Acres (RRR 1/5), which is consistent with the Comprehensive Plan designation for the site. Mineral extraction activities are permitted in the RRR 1/5 zoning district with approval of a special use permit. For those operations approved with a special use permit, asphalt production is a permitted accessory use in conjunction with an existing mineral extraction operation. The mining operation, a registered sand and gravel operation, is designated as such on the Thurston County Designated Mineral Resource Land map. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report; Whitcher Testimony.*
3. In September 1987 a Thurston County Hearing Examiner granted approval for gravel extraction at the subject property (SUP-17-86). Pursuant to the conditions of that permit, the gravel extraction can be conducted five days a week, Monday - Friday, from 7:00 a.m. to 6:00 p.m. On October 2, 1995 the Thurston County Board of County Commissioners expanded the permit to include asphalt production (SUP-94-006). The asphalt plant is restricted to the same operational hours as gravel extraction and is limited to a 3,000-ton output daily with a yearly limit of 260,000 tons. Daily vehicle trips associated with the asphalt plant and gravel mining operations are limited to a maximum of 244 per day. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*
4. The surrounding land uses include single-family residential development on five acre tracts to the north; a mix of residential and agricultural to the south of 113th Avenue SW Development and to the west; Interstate 5 along the eastern property boundary; and Scott Lake subdivision and golf course across the freeway to the southeast. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*
5. Written notice of the public hearing was sent to all property owners within 2,600 feet of the site and notice was published in The Olympian on April 13, 1999, at least ten (10) days prior to the hearing. Notice was posted on May 7, 1999. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*
6. Pursuant to SEPA, Thurston County was designated as the lead agency for review of environmental impacts that may result from the proposed expansion. On March 17, 1999, the County issued a Mitigated Determination of NonSignificance (MDNS) for the project which became final on April 1, 1999. The MDNS included five conditions of approval pertaining to stormwater management; compliance with conditions of the previously approved permits; and, noise limits at night. *Exhibit 1 (AAPL-97-1987), Attachment c.* An appeal of the MDNS was filed on April 8, 1999.

### **Findings on the five-year review**

7. In September 1987, Thurston County approved a special use permit allowing a gravel mine and rock crushing operation on the subject property. Condition G of the Hearing Examiner's decision required review at two years and five years to determine compliance with the conditions of approval.<sup>3</sup> As part of the first five-year review concluded on October 22, 1993, the Examiner imposed three additional conditions and amended one condition from the initial decision. The current analysis is the second five-year review. The purpose of the review is to determine whether the Applicant is in compliance with all conditions of previous Special Use Permit approvals and applicable State and Federal laws. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*
8. The County reviewed the conditions of approval, visited the site and submitted that the Applicant substantially complied with all conditions of approval as set by the Examiner and County Commissioners. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.* The County provided no evidence of noncompliance.
9. During the 1999 review, the Hearing Examiner imposed additional landscaping requirements. To fulfill this condition, the Applicant planted trees in December 1993. According to the County, the fir and willow trees planted within the eastern, western and northern buffers are growing well. The trees along 113<sup>th</sup> Avenue have been replanted several times and an irrigation system has been installed to increase the survival rate. The County recommended the Applicant continue its efforts to establish trees along 113<sup>th</sup> Avenue. In addition, weeds, including scotch broom, have grown up on the berms. The County recommended that the Scotch broom be mowed and grasses be reestablished. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*
10. As part of the 1999 five-year review, the County requested updates from every county and state department with jurisdiction about the Applicant's compliance with applicable regulations and permits. The County contacted the Department of Natural Resources, the Olympic Air Pollution Control Authority, the Department of Fish and Wildlife, and the Department of Ecology. Reviewers at the County level included Environmental Health, Roads and Transportation Services, and the Fire Marshal, in addition to Development Services. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.* No issues were identified by any of these agencies that could not be mitigated with additional conditions.
11. For more than 12 months, no complaints have been filed against the Applicant with the County's compliance officer who handles complaints relating to existing businesses and operations similar to that as run by the Applicant. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301),*

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<sup>3</sup> The condition read: *This special Use Permit shall be effective indefinitely. It shall be reviewed by the Hearing Examiner five years from the date of this approval and not less than every five years thereafter. At the time of such review, the Hearing Examiner may impose additional conditions upon the operation of it if necessary to further mitigate the impacts of the use. At the time of review, the Hearing Examiner may also terminate the use if conditions of approval have been violated or the Examiner concludes that adverse impacts of the use cannot adequately be mitigated by existing or additional conditions of approval. The site shall also be inspected by the County on an annual basis.*

*Staff Report.* The Development Services Department, however, was contacted by neighbors and by REBOUND about lighting issues at the site. Conditions in the issued permits required: that lighting of the facility be limited to “low intensity lights” and that they be shielded and directed “so that the illumination only affects the premises of the permit” (*SUPT -17-86, Condition H*); and that lighting be designed and function in a manner “that shields direct light from adjoining streets and properties. *SUPT-94-006, Condition 4*. The staff determined that the lighting is adequate to protect the neighborhood. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report*. No contradictory testimony was submitted.

**Findings on the request to amend the previously issued SUPs**

12. The Applicant requested two amendments to the requirements of the previously approved permits, *SUPT -17-86* and *SUPT-94-006*. The first amendment request would allow expansion of the gravel pit vertically from 30 feet to 80 feet, and the second request would extend operating hours for the asphalt plant when providing materials for public works jobs. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report; Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Attachment c*.
13. Pursuant to the terms of *SUPT-17-86*, mining is currently restricted to depths no greater than 30 feet. The Applicant requested approval to excavate deeper and to mine as deep as 80 feet. Although the excavation would be deeper, there would be no change of plant operations or change of the surface area where gravel extraction occurs. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Attachment c*.
14. Marketable gravel material may not extend to 80 feet in depth in all locations of the site. The maximum excavation depth on site may also be restricted if either unsuitable material or some sort of undiggable layer is encountered. Except for these restrictions, the maximum depth of the excavation will be a function of the width of the pond and the required underwater slopes at 1.5:1. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report; Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Attachment c*.
15. Surface and ground water are relevant because of the geologic formations at the site. The mine site has adequate area to meet the mandatory setbacks and slope requirements both above and below water level. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report; Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Attachment c*.
16. In the text of *SUP-94-006*, discussion was made by the Hearing Examiner of the ground and surface water issues involved with the extraction activity on site. Based on onsite drillings completed at the time of that SUP, two outwash deposits of gravel and sand occur beneath the subject property, a Vashon gravel outwash and an older outwash. Below the lower outwash, a formation of clay rich sand and gravel was identified as the layer that acts as the base of the outwash aquifer system. During the drilling activity water levels were observed ranging from 189.54 feet to 190.43 feet, which is a flat water level gradient. *Robinson & Noble Report, November 6<sup>th</sup>, 1997*.

17. At the public hearing, many concerns were raised about the potential for contamination of water located deeper than the 30-foot pit. The argument was that the proposed vertical expansion could cause contamination with metals and pollutants, increased turbidity and also cause the dissemination of contaminants from an upper aquifer to a lower aquifer. *Fraser Testimony; Martig Testimony; Exhibit 1, Attachment e.*
18. At the hearing on the instant requests, a witness Kenneth Martig submitted that, based on borings done in 1986 with a solid auger machine, confining till exists between the two gravel units. *Martig Testimony.* However, a representative of the Applicant submitted that the solid augers which were used do not have the capability of retrieving point specific samples including those relating to water levels. For the most recent borings, the Applicant used “reverse circulation” air type rigs that facilitate direct observation of water levels encountered during drilling. Based on these readings the engineers for the Applicant determined there is no confining unit between the Vashon gravel outwash and the pre-Vashon gravel deposits and there are not two aquifers but only one. The removal of additional gravel will not add to contamination potential, but will continue the system as it exists. *Krautkramer Testimony.*
19. According to Mr. Martig, the deepest level that gravel is found is at 72 feet. *Martig Testimony.* The Applicant submitted that 80-feet is a “reasonable extrapolation” and that 72 feet would most likely be the deepest excavation. *Krautkramer Testimony.*
20. The Thurston County Comprehensive Plan has designated this property as "mineral resource land" recognizing it as property with long-term commercial significance. The additional depth will allow continued economic viability of the mining operation. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*
21. The Applicant requested expanded hours of operation for contracts with public agencies such as the Washington State Department of Transportation because public works projects require paving during the evenings and at night when traffic volumes are lower. The Applicant requested permission to batch asphalt, load and haul asphalt and gravel during evening and night hours when required by public works contracts. No change is proposed for mining or crushing operation hours, which are from 7:00 a.m. to 6:00 p.m., Monday through Friday. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*
22. SUP-17-86 and SUP-94-006 established greater restrictions than required for standard permits of the Mineral Extraction Code. Pursuant to *TCC 17.20.115(C)*, hauling jobs under contract with a public agency are exempt from the hours of operation restrictions for gravel mining and accessory uses within or adjacent to a residential zoning district. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*
23. Lighting for night time operations was submitted as a concern of the neighbors, Operating Engineers Local 612 and REBOUND. The previous SUPs included conditions directly regulating lighting. Condition H, SUP-17-86 required that “[a]ny lighting of the facility shall be limited to low intensity lights and shall be shielded and directed so that the illumination only

affects the premises of the permit.” Condition 4, SUP-94-006 required that “[l]ighting shall be designed and shall function in a manner which shields direct light from adjoining streets and properties.” The County submitted that the lighting onsite is adequately conditioned to mitigate all impacts to the neighborhoods. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*

24. Residents in the vicinity of the subject property expressed concern regarding potential for excessive sound to be generated during night time, evening and weekend hours. The concern was that the sound would exceed the allowable standards and adversely impact neighboring properties. As support for this contention, it was submitted that in 1996, the mining operation exceeded the noise limit, and that noise monitoring has been inconsistent since then. The issues raised included concern that weekend, night time, or evening hours would have a greater adverse impact on residents in the vicinity than the existing daytime use. *Soth Testimony; Fraser Testimony; Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Attachment e.*
25. Eric Hansen, a senior environmental consultant experienced in environmental noise assessments, evaluated the measurements taken by BRC Acoustics, an environmental noise consulting firm. The measurements were performed in response to the County’s requirement for periodic monitoring. Mr. Hansen testified that he evaluated measurements for compatibility with the surrounding land uses and for compliance with applicable noise standards. Based on BRC’s measurements, the sound generated by the operation of the asphalt plant is masked by the ambient sound levels generated by the freeway. Because freeway noise levels always exceed the asphalt plant, BRC was unable to determine precisely how loud the asphalt plant was. The mining operation with the asphalt plant has been determined to be in compliance with the 55 dBA limit that the County imposed on mineral extraction in residentially zoned areas.<sup>4</sup> *Declaration of Eric Hansen.*
26. According to WAC 173-60-040, the asphalt plant would be subject to a 45 dBA noise limit when operating between the hours of 10:00 p.m. and 7:00 a.m., because, by its location in a residentially zoned area, it is considered a Class A EDNA and the receiving properties are also a Class A EDNA. Mr. Hansen testified that although it is difficult to verify compliance with the 45 dBA noise limit because the freeway noise is louder than the asphalt plant, his evaluation indicates that the asphalt plant generates sound levels near, if not below, the 45 dBA noise limit. According to Mr. Hansen, the asphalt batch plant will not create adverse noise impacts because it will not be audible above the ambient noise. Further, freeway noise diminishes between 3 and 4.5 dBA per doubling of the distance from the freeway, but noise from point sources, such as the asphalt plant, diminishes approximately 6 dBA per doubling of the distance from the source. As a result, the masking effect of the freeway noise will increase with distance. *Declaration of Eric Hansen.* According to Mr. Hansen’s analyses, the noise generated from the asphalt plant will be compatible with the surrounding uses.

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<sup>4</sup> Pursuant to *TCC 17.20.110*, mineral extraction activity within the residential zoning districts of the county shall be considered a Class “A” EDNS pursuant to WAC 173-60-030(2), the state noise standards. In accordance with WAC 173-040, the noise limitation for a Class A EDNA is 55 dBA when the receiving property is a Class A dBA. The noise limit is reduced by 10 dBA between 10 p.m. and 7 a.m.

27. Notwithstanding his analysis, Mr. Hansen believes that the County incorrectly applied the noise limits to the asphalt plant. He testified that the county is in error in considering the asphalt plant a residential noise source and that the county is in error when it considered adjacent properties as residential noise receiving properties (Class A EDNA). This is important to determine compliance with the noise limits set forth in WAC 173-60-040. *Declaration of Eric Hansen.* According to Mr. Hansen, “[g]ravel pits, processing plants, and related batch plants are always considered Class C noise sources unless the underlying zoning of the site is for residential or commercial uses and the local jurisdiction has formally adopted an ordinance that ties the EDNAs to zoning and that the jurisdiction has submitted that ordinance to the Department of Ecology.” Because the County has not linked noise district to zoning, the mining operation should be considered a Class C noise source. Further, although the County specifies that mineral extraction activity within residential zones must be considered a Class A EDNA, the asphalt plant is an accessory use, not a mineral extraction activity, and is not subject to this code provision. In addition, Mr. Hansen asserts that the adjacent properties contain farms, which are Class C EDNAs. *Declaration of Eric Hansen.* The noise limit from a Class C EDNA to a Class A EDNA is 60 dBA (50 dBA from 10 p.m. to 7 a.m.). The noise limit from a Class C EDNA to a Class C EDNA is 70 dBA. *WAC 173-60-040.*
28. The County reviewed the vertical expansion and the extended hours for compliance with noise standards, traffic impacts, protection of groundwater and other impacts and testified that the mitigation measures found in the conditions to this decision will ensure that the project does not adversely impact the neighborhood. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*
29. The Applicant does not propose an increase in the number of truck trips or amount of asphalt produced. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report.*

#### **Findings on the Liquid Propane Gas storage**

30. As part of the permit, the Applicant requested authorization to store more than 2,000 gallons of LP-gas at the site for a fuel supply to the asphalt plant. If allowed, the Applicant will replace the two existing 15,000-gallon temporary containers with one 20,000-gallon LP-gas container. (The two 15,000 gallon tanks were approved by the County under a temporary permit.) Neither the amount of fuel stored nor the number of trips delivering fuel would be increased. *McElroy Testimony; Exhibit 1, Attachment b; Whitcher Testimony.*
31. LP-gas is the main source of fuel for the asphalt plant operation. The facility receives LP-gas deliveries from transport facilities weekly, and on some occasions, during high volume periods, additional deliveries might be made. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report, Attachment b.*
32. The LP-gas tank storage is located in a flat area of the existing gravel pit. The open flame burner to the asphalt heater is mounted 10 feet above the ground. Escaping gas will dissipate from the area because no low point pit areas exist in the site. The prevalent wind direction is from the southwest. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Staff Report, Attachment b.*

33. The site where the tank will be stored is approximately 75 feet to 150 feet from the onsite vehicular parking. The plant offices are located about 75 yards from the tank site. Two single-family residences are located offsite approximately 700 yards east of the tank site. A farm is located approximately ¼ mile to the south across 113<sup>th</sup> St. SW. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Attachment b.*
34. At the public hearing, many concerns were raised about the potential danger from the propane, the ability to contain fires and the possibility of explosions. *Hamilton Testimony; Roberts Testimony; Williams Testimony.*
35. Tom Miller, Fire Marshal, Lacey Fire District #3, reviewed the proposal including response time. *Whitcher Testimony; Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Attachment b.* LP-gas fires are not common occurrences to the fire service. The fire marshal recommended the Applicant work cooperatively with the fire district to develop emergency procedures for the mining operation and to strengthen the fire district's knowledge about the hazards and fire protection systems on and around the site. Further the hazards associated with LP-gas would be reviewed. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Attachment b.*
36. The Little Rock Fire Department, which would provide protection to the subject property, is a combination paid and volunteer organization. First response from the headquarters would take 3.5 minutes and would be a two-person unit during the day and a three-person unit at night. It is anticipated that the personnel on scene would double in 10 minutes and triple in 15 minutes. The Fire Department has mutual aid agreements with other fire districts, but response time would take over 15 minutes. *Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Attachment b.*

### **Jurisdiction for SUPs**

The Hearing Examiner is granted the authority to hear and decide special use permits pursuant to Chapter 36.70 of the Revised Code of Washington and Chapter 20.54 of the Thurston County Code. Chapter 36.70 RCW authorizes the Hearing Examiner to hear and decide cases in the manner determined by county ordinances and consistent with state law.

Pursuant TCC 14.32.087, the Hearing Examiner is the approval authority for permits to allow storage of liquefied petroleum gas in excess of 2,000 gallons.

### **Criteria for Review for the Special Use Permits and LP-gas Storage**

#### **Standards for Special Use Permits:**

Pursuant to the Thurston County Municipal Code 20.54.040, a Special Use Permit must be consistent with the following criteria:

- A. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan and all applicable Federal, State, Regional, and Thurston County laws or plans.

- B. The proposed use shall comply with the general purpose and intent of the applicable zoning district regulations and sub-area plans. Open space, lot, setback, and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in the chapter.
- C. No application for a Special Use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
  - 1. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities or other matters affecting the public health, safety, and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effects may occur.
  - 2. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities existing or planned to serve the area.

*Thurston County Mineral Extraction Code:*

Mineral extraction and accessory uses are subject to the following provisions and the provisions of Chapter 17.20 TCC, the Thurston County Mineral Extraction Code:

TCC 17.20.110 Noise.

- A. Noise levels shall comply with WAC 173-60.

TCC 17.20.115 Hours of operation.

- A. Special Use permits containing specific conditions regarding operating hours shall be governed by those conditions
- B. For gravel mining and accessory uses within or adjacent to a residential zoning district, the hours of operation for excavating, processing and loading are limited to seven a.m. to seven p.m. Monday through Saturday.
- C. The following activities are exempted from the provisions of subsection B in this section:
  - 1. Excavation and loading necessitated by flood emergencies;
  - 2. On Monday through Saturday, the early morning processing of concrete necessary to provide beneficial strength;
  - 3. Hauling to jobs under contract with a public agency. However, for any such hauling outside the hours provided in subsection B of this section, the operator shall post reasonable notice near the site, notify the planning director, and notify the legal newspaper of the county and at least one radio station covering the area of the site.

*Standards for approval of a permit to allow storage of over 2,000 gallons of LP-gas:*

Pursuant to TCC 14.32.187(B), the Hearing Examiner, after consultation with the chief, may authorize issuance of a permit only if:



- (1) the proposed use does not create a fire hazard which threatens human health or safety, and
- (2) is consistent with the Thurston County Zoning Ordinance.

In making this determination, the hearing examiner shall consider all relevant information, including, but not limited to topographical features, proximity to building and the nature of their occupancy, the nature of nearby land uses, proximity to population centers or developed areas, the capacity of the proposed use, the degree of fire protection to be provided and the facilities of the local fire department, and the nature and quantity of stored material. The hearing examiner may require the applicant to submit any additional information or material which the hearing examiner finds necessary for the proper review of the application. The Hearing Examiner shall state in writing the reasons for granting or denying such a permit.

### **Conclusions Based on Findings on the Five-Year Review**

1. The Applicant operates a sand, gravel, and asphalt business on a 69-acre parcel located at 3200 - 113<sup>th</sup> Avenue SW, Olympia, Washington. The legal description of the subject property is a portion of the west half of the southwest quarter, Section 28, Township 17 North, Range 2 West, W.M. Thurston County, Assessor Tax Parcel No. 21728320000. *Finding of Fact No. 1.*
2. The Applicant has substantially complied with all conditions of approval as set by the Examiner and County Commissioners. The County provided no evidence of noncompliance and the conditions of approval have been satisfied. *Findings of Fact No. 7 – 11.*
3. As part of the 1999 five-year review, the County received updates from every county and state department with jurisdiction about the Applicant's compliance with applicable regulations and permits. No issues were identified by any of these agencies that could not be mitigated with additional conditions. *Findings of Fact No. 7 – 11.*

### **Conclusions on the request to amend conditions of approval**

1. As conditioned, the proposed extension of hours and the vertical expansion of the pit will comply with the Thurston County Comprehensive Plan and all applicable Federal, State, Regional, and Thurston County laws and plans. The Thurston County Comprehensive Plan shows the site to be within the rural designated portion of the County, and it is a registered mining operation on the Thurston County Designated Resource Land map. The potential adverse impacts resulting from the extension of hours and the vertical expansion of the pit will be minimized. *Findings of Fact No. 2, 18, 21, 23, 25- 28.*
2. The existing mining operation is legally operating in the RRR 1/5 zoning district with a SUP. The proposed amendments comply with the general purpose and intent of applicable zoning district regulations and sub-area plans for RRR 1/5 zoning district. The asphalt plant will be subject to applicable noise standards and all conditions and requirements for the existing operation, with the exception of those requested. The expanded pit depth will allow continued viability of the mining operation. The proposed

expansion of hours will allow the Applicant to provide asphalt to public agencies for public works projects. *Findings of Fact No. 2, 12 - 29.*

3. The proposed amendments are appropriate for the location of the existing mining operation. The subject property contains an existing mining operation on land designated as such on the Thurston County Mineral Resource Land map. *Finding of Fact No. 2.*
4. As conditioned, the proposed modifications to the existing operation will not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities or any other matter affecting the public health, safety, and welfare. No additional truck trips or increase in asphalt production will result. *Findings of Fact No. 12 – 29.*
5. Residents in the vicinity expressed concerns about potential for adverse noise impacts from the operation of the asphalt plant in the evening, night time, and weekend hours. The Applicant has credibly demonstrated that ambient noise from the highway masks the noise from the mining operation, including the asphalt plant. The noise levels from the asphalt plant must comply with WAC 173-60 and the Applicant must monitor sound levels to ensure compliance. The expanded hours are consistent with *TCC 17.20.115(C)*, which exempts hours of operations for hauling jobs under contract with a public agency. *Findings of Fact No. 24 – 27.*
6. As conditioned, the proposed vertical expansion of the pit will not adversely impact groundwater in the area. The Applicant has credibly demonstrated that there is not separate upper and lower aquifers on the site and therefore the increased depth of the pit will not increase potential contamination of groundwater. *Findings of Fact No. 13 – 22.*
7. As conditioned, the existing landscape will screen the proposed activities from the adjacent properties. The number of truck trips at the site will not increase from the previously approved level. As proposed and conditioned the project will not have an undue adverse impact on the natural environment and adjacent properties. *Finding of Fact No. 9.*
8. The proposed modifications to the existing operation will be adequately served by utilities and will not impose an undue burden on any of the improvements, facilities, or utilities existing or planned to serve the area. *Finding of Fact No. 29.*

#### **Conclusions on the LP-gas storage facility**

9. The proposed use will not create a fire hazard which threatens human health or safety. The new tank will replace two temporary storage facilities. As conditioned, safety measures to ensure no safety hazard is created will be implemented. *Findings of Fact No. 30 – 36.*
10. The storage tank is consistent with the Thurston County Zoning Ordinance. The LP-gas will be used for an asphalt plant that is an accessory use to a mining operation. Both the

asphalt plant and mining operations are legally operating in the RRR 1/5 zoning district with SUPs. *Findings of Fact No. 30 – 36.*

11. The L-P storage is allowed because the L-P gas storage facility will not result in increased fuel onsite; the number of tanks will decrease; the tank will be removed from other uses on and offsite; the Fire District has indicated approval and a willingness to work with the Applicant; and the type of gas is not likely to explode. *Findings of Fact No. 30 – 36.*

### **DECISION**

Based upon the preceding Findings and Conclusions, the request for Special Use Permit is APPROVED, subject to the following conditions:

1. Continued compliance with the conditions established through SUP-94-006, SUP-17-86 and SUPT-99-0112 is required.
2. Any asphalt batch plant operator must ensure that night time noise levels meet the standards in WAC 173-60 and that they are monitored by a technician with the qualifications as set forth in WAC 173-58 (or acceptable qualifications as determined by the Health Officer). The technician shall use instruments that meet the qualifications of WAC 173-58. Noise levels must be measured at the property boundaries prior to night time operations, and at least quarterly after the initiation of the night time batch plant activity. The monitoring reports must be provided to the Development Services and the Environmental Health Department and the County for review. Failure to supply said records could result in the revocation of all permits.
3. If the night time standards cannot be met, further mitigation measures will be required to meet the applicable standards. These mitigation measures may include, but are not limited to, increasing the height of the existing berms, providing material stockpiles around the batch plant operation, applying additional noise reduction measures to the batch plant operation. Or moving the batch plant further away from the adjacent property lines.
4. For any hauling or asphalt batching outside the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, and, at any hour on Saturday and Sunday, the plant operator must post reasonable notices near the site, notify the planning director, and notify the legal newspaper of the county and at least one radio station covering the area of the site at least seven days before commencing operations.
5. Hauling and batching outside the hours permitted through SUP-94-006 is allowed only for jobs contracted with a public agency or emergency response.
6. The berms must be maintained by mowing the Scotch broom in the fall of 1999 and then every year thereafter, at least once a year in the fall. Grass must be replanted as needed to cover the berms.

7. The proposed development must comply with all requirements and best management practices for the treatment of stormwater including but not limited to high quality oil/water separators, grass lined swales, extended detention dry ponds, wet ponds or created wetlands in compliance with the Drainage Design and Erosion Control Manual for Thurston County, as implemented by the Development Review division.
8. The Applicant shall comply with all recommendations for the LP-gas storage, as set forth by the fire marshal in Exhibit 1 (SUPT-97-1987/SUPT-99-0301), Attachment b.

Decided this 6th day of August, 1999.

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James M. Driscoll  
Hearing Examiner for Thurston County

*Property owners affected by this decision may request a change in valuation for property tax purposes from the Thurston County Assessor.*

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