

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. SUPT 010195
	)	APPL 010195
<b>TRANSALTA CENTRALIA MINING</b>	)	
	)	FINDINGS, CONCLUSIONS
for Approval of a Special Use Permit	)	AND DECISION
	)	
and the Appeal of Gail Kaufman	)	
of the SEPA Threshold Determination	)	
	)	
_____	)	

**SUMMARY**

The Special Use Permit to expand an existing 237-acre gravel mine onto an adjacent 40 acre parcel is REMANDED to the County for further review, as set forth herein. The appeal of the MDNS is DENIED and the MDNS is upheld, with the condition that the hours of operation shall be amended to be consistent with Thurston County ordinances.

**SUMMARY OF RECORD**

**Hearing Date**

TransAlta Centralia Mining LLC (referred to as TransAlta or Applicant), which owns a gravel mine in Thurston County, has requested approval from Thurston County for a Special Use Permit for the expansion of its existing sand/gravel mining operation.

Pursuant to the State Environmental Policy Act (SEPA) the request was reviewed by Thurston County for the identification of environmental impacts projected to result from the operation of the proposed site. On October 11, 2001 the County issued a Mitigated Determination of Nonsignificance (MDNS). An appeal of this threshold determination was filed by Gail Kaufman, John Kaufman, Cindy Homann, Tracy Homann, Lynn T. Johnson, and Robert Johnson (Gail Kaufman).

The open record hearing on the Special Use Permit and the open record appeal of the MDNS were consolidated.

The Hearing Examiner held a pre-hearing conference via telephone with the attorney for the County, the attorney for the Appellant, the attorney for the Applicant, and County representatives from the Development Services Department, and Water and Waste Management Department. During the pre-hearing conference, the parties established a schedule for the hearing and the submittal of a statement of the issues, witness lists and exhibits. *Exhibit 2, Attachment c.*

The Hearing on the SEPA appeal and the permit was commenced on January 29, 2002, and was continued for additional testimony on February 4, 2002.

### **Witnesses**

At the open record hearing, the following presented testimony and evidence:

1. Nancy Pritchett, Thurston County Department of Development Services
2. Lizbeth Morrell, Thurston County (Planning)
3. Steve Johnson, Thurston County (Roads)
4. John Ward, Thurston County Environmental Health Division
5. Darrell Cochran, Thurston County Environmental Health Division
6. Bob Mead, Thurston County Environmental Health Division
7. Tim LeDuc, appearing on behalf of the Applicant
8. Michael Minor
9. John Kaufman
10. Ioana Park
11. John Grayless
12. Lloyd Brown
13. Rob Johnson
14. Gail Kaufman
15. Cindy Homann
16. Lynda Townsend
17. Tracy Homann
18. Carol Serdar, Washington State Department of Natural Resources
19. Mark Varljen
20. Kathy Grayless
21. Robin Duncan
22. Troy Bussey

Richard Phillips represented the Appellant. Glenn Amster represented the Applicant. Jeff Fancher represented the County.

### **Exhibits**

At the hearing the following exhibits were admitted as part of the official record:

EXHIBIT 1 Thurston County Development Services Department Report for the Special Use Permit dated January 28, 2002

- Attachment a Notice of Public Hearing dated January 15, 2002
- Attachment b Special Use Permit Application dated March 1, 2001
- Attachment c Vicinity/Zoning Map
- Attachment d Skookumchuck Gravel Pit Map 1 – Property Boundary dated October 9, 2001, Revised
- Attachment e Site Plan Illustrating Topsoil Placement Berms dated May 15, 2001
- Attachment f Site Plans Illustrating Mine Sequence/Wash Plant Location, Sand Backfill Areas, Topsoil Replacement Areas, and Revegetation Plan dated May 15, 2001
- Attachment g Site Plan Illustrating Adjacent Landowners dated January 18, 2001
- Attachment h Mitigated Determination of Nonsignificance issued October 11, 2001
- Attachment i Memorandum from Steven R. Johnson, Thurston County Roads and Transportation Services, Development Review Section dated July 10, 2001
- Attachment j Letter from Steven R. Johnson, Thurston County Roads and Transportation Services dated June 12, 2001
- Attachment k Letter from John Ward, Thurston County Public Health and Social Services Department dated October 11, 2001
- Attachment l Memorandum from Robert Mead, Thurston County Public Health and Social Services Department dated October 8, 2001
- Attachment m Comment Letter from Lynn T. Johnson dated August 18, 2001
- Attachment n Comment Letter from Lynda Townsend received August 21, 2001
- Attachment o Comment Letter from Rob Johnson and Cindy Johnson dated August 26, 2001
- Attachment p Comment Letter from Janet Duncan dated August 26, 2001
- Attachment q Comment Letter from Lloyd G. Brown dated August 27, 2001
- Attachment r Comment Letter from John Kaufman dated August 27, 2001
- Attachment s Comment Letter from Tracy Homann and Cindy Homann dated August 28, 2001
- Attachment t Comment Letter from Maxine Gan dated August 29, 2001
- Attachment u Comment Letter from Tiki Carlson and Charles R. Carlson dated August 29, 2001
- Attachment v Comment Letter from Lloyd G. Brown dated October 24, 2001

**EXHIBIT 2    Thurston County Development Services Department Report for the Appeal of a Mitigated Determination of Nonsignificance dated January 28, 2002**

- Attachment a Notice of Public Hearing dated January 15, 2002
- Attachment b Appeal of an Administrative Decision dated November 1, 2001
- Attachment c Pre-Hearing Order dated November 28, 2001
- Attachment d Appellant Appeal Statement received December 18, 2001
- Attachment e Memorandum from Lizbeth Morrell, Thurston County Development Services dated January 11, 2001

- Attachment f Applicant's Response to Appellants' Statement of Issues dated January 11, 2002
- Attachment g Skookumchuck Gravel Pit Map 1 – Property Boundary dated October 9, 2001, Revised; Site Plan Illustrating Topsoil Placement Berms dated May 15, 2001; Site Plans Illustrating Mine Sequence/Wash Plant Location, Sand Backfill Areas, Topsoil Replacement Areas, and Revegetation Plan dated May 15, 2001
- Attachment h Memorandum from L. Darrell Cochran dated January 10, 2002
- Attachment i Memorandum from Robert Mead dated January 14, 2002
- Attachment j Mitigated Determination of Nonsignificance issued October 11, 2001
- Attachment k Comment Letter from Lynn T. Johnson dated August 18, 2001
- Attachment l Comment Letter from Lynda Townsend received August 21, 2001
- Attachment m Comment Letter from Janet Duncan dated August 26, 2001
- Attachment n Comment Letter from Tiki Carlson and Charles R. Carlson dated August 29, 2001
- Attachment o Comment Letter from Lloyd G. Brown dated August 27, 2001
- Attachment p Comment Letter from Concerned Property Owners dated October 24, 2001
- Attachment q Letter from Kari Rokstad, Washington Department of Ecology dated April 6, 2001
- Attachment r Letter from Carol Serdar, Washington State Department of Natural Resources dated August 29, 2001
- Attachment s Letter from Kari Rokstad, Washington Department of Ecology dated October 30, 2001
- Attachment t Letter from Tim LeDuc, TransAlta Centralia Mining dated November 13, 2001
- Attachment u Environmental Checklist received March 10, 2001
- Attachment v Soil Survey of Thurston County and Thurston County Comprehensive Plan Protected Soils Chart
- Attachment w TransAlta Centralia Mining Noise Impact Assessment dated February 2001
- EXHIBIT 3 Skookumchuck Quarry Expansion Special Use Permit Application dated February 2001
- EXHIBIT 4 Mining and Reclamation Plan dated January 15, 2002
- EXHIBIT 5 Overview of Exhibit 4
- EXHIBIT 6 Technical Memorandum prepared by Michael A. Minor dated January 25, 2002
- EXHIBIT 7 Resume of Michael A. Minor
- EXHIBIT 8 Photos (8) taken by John Kaufman
- EXHIBIT 9 Resume of Ioana Park
- EXHIBIT 10 BRC Acoustics Report prepared by Ioana Park dated January 22, 2002
- EXHIBIT 11 BRC Acoustics Report RE Review of Applicant's Noise Monitoring and Compliance Program dated January 25, 2002
- EXHIBIT 12 Water Management Laboratories Inc. Ground Water Analysis Report dated January 22, 2002

- EXHIBIT 13 Exhibit withdrawn  
EXHIBIT 14 Letter from John M. Peach, Washington Department of Ecology RE Hydrogeological Report Review dated January 24, 2002  
EXHIBIT 15 Resume of Mark Varljen  
EXHIBIT 16 Graph of Monitoring Well 88E53  
EXHIBIT 17 Graph of Monitoring Well 88E52  
EXHIBIT 18 Technical Memorandum prepared by Michael A. Minor RE Noise Monitoring Program dated February 1, 2002  
EXHIBIT 19 Analytical Results Report for Ditch 1, Ditch 2, Ditch 3 and Well 1 dated January 31, 2002  
EXHIBIT 20 Report of Geotechnical Investigation Revision 1 prepared by Todd Parkington, URS dated November 19, 2001  
EXHIBIT 21 Resume of Troy Bussey

The records of both segments of the hearing are combined.

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions.

### GENERAL FINDINGS

1. TransAlta Centralia Mining (TransAlta) owns a 237-acre gravel mine south of Skookumchuck Road Southeast, approximately five miles east of State Route 507.<sup>1</sup> TransAlta uses the gravel mine to provide road-surfacing materials for its coal mine operation located approximately five miles to the south. *Testimony of Mr. LeDuc.* TransAlta requested approval of a Special Use Permit for the expansion of the existing sand/gravel operation into an adjacent 40-acre tract, located at 6439 Skookumchuck Road Southeast, Tenino, Washington. *Exhibit 1, Attachment b; Exhibit 2, Attachment f.* If approved, the mine would operate for five to six years, and during that time would extract approximately two million tons of aggregate. *Exhibit 1, Attachment b.* The vast majority of the materials would be used for road maintenance at the coal mine. *Testimony of Mr. LeDuc.*
2. The existing site and the proposed expansion site are zoned Rural Residential/Resource, One Dwelling Unit per Five Acres (RRR 1/5). *Exhibit 1, Attachment c.* The primary permitted uses in the RRR 1/5 zone are agricultural, single-family and two-family residential, home occupation, and farm housing accessory to a farm residential uses. *TCC 20.09A.020(1-4).* Mining activities are not listed as a permitted use in an RRR 1/5 zone. TCC Chapter 20.54 establishes special uses that are allowed to be developed in the zone. *TCC 20.09A.025; TCC 20.54.030.* Included within these uses are mineral extraction and accessory uses. *See TCC Table 1 of Uses (pg. 721 of TCC).* The record

---

<sup>1</sup> The legal description of the proposed expansion site is a portion of Section 10, Township 15 North, Range 1 West, W.M., also known as Assessor's Parcel No. 11510240000 and 11510240100. *Exhibit 1, Staff Report, page 1.*

does not contain evidence that the existing operation has ever received a Special Use Permit from Thurston County; nor does it contain evidence that the County has ever certified the existing operation as a nonconforming use. The Applicant, however, has secured a permit from the Washington State Department of Natural Resources for the existing mining operation. *Correction to Applicant's Response to Appellant's Statement of Issues.*

3. Properties in the vicinity of the proposed expansion site are zoned Long-Term Agricultural (LTA), RRR 1/5, and Long-Term Forestry (LTF). *Exhibit 1, Attachment c.*
4. The character of the area is rural residential. Single-family residences surround the existing gravel mine to the north, east, west, and southwest. Four single-family residences are located immediately north of the proposed expansion site, across Skookumchuck Road Southeast. *Exhibit 4.*
5. The Applicant proposes to extract gravel and sand (a by-product) from a parcel north of the existing operation. The surface elevation at the site ranges from 290 to 300 feet and the average pit floor elevation at the existing pit is 245 feet. The Applicant expects its mining activities to average a depth of approximately 45 feet, and to bottom at an elevation of approximately 255-260 feet, unless recoverable gravels are found below that level. The existing DNR Surface Mining Permit allows the Applicant to mine to a depth of 75 feet below the surface elevation (approximately 215 to 225 feet). *Exhibit 3; Testimony of Mr. LeDuc.*
6. The Thurston County Comprehensive Plan (CP) does not identify the site as a Designated Mineral Resource Land. *Exhibit 1, Staff Report, page 2.*
7. The Applicant proposes to retain the same number of employees at the site and use the same equipment. *Testimony of Mr. LeDuc.*
8. Domestic water wells in the vicinity of the proposed expansion generally range from 35 to 78 feet deep. *Exhibit 2, Attachment w.* The County stated that wells in this range are considered shallow wells, which are more prone to water quality problems than are deeper wells. The Applicant is required to engage in ground water monitoring to provide advance notice of subsurface migration of contaminants toward down gradient domestic wells. *Testimony of Mr. Mead.*
9. Based on known geologic conditions, a subsurface layer of water bearing sand and gravel deposits known as the Vashon recessional outwash extends from beneath the topsoil to an elevation of approximately 255 feet. Most of the domestic water wells in the vicinity draw water from this aquifer. A layer of glacial till or clay lies beneath the recessional outwash between elevations of approximately 255 and 245 feet. It is unknown whether this layer is an aquitard (a layer that impedes the flow of water but does not necessarily block flow). Beneath the glacial till or clay is a layer of water bearing sand and gravel

deposits known as the Vashon advance outwash. Experts have been unable to determine from the known conditions whether the advance outwash is a separate aquifer from the recessional outwash. If the aquifers are hydraulically connected without an intervening aquitard, the depth of the mining activities is not critical. However, if the aquifers were separated by an aquitard, mining activities that penetrate the aquitard would allow increased mingling of the aquifers. *Exhibit 3*. It is generally accepted that unnecessary penetrations of an aquitard should be avoided to prevent spreading of ground water contamination. *Testimony of Mr. Mead*. Permits issued by the Department of Natural Resources do not regulate whether mining activities penetrate an aquitard, and are limited to regulating the depth of extraction activities. *Testimony of Ms. Serdar*.

10. The Applicant proposes to operate the mine between 7 a.m. and 10 p.m., 7 days per week. Approximately ten employees would be on-site. Aspects of the mining that would generate noise include crushing, loading, and hauling of rock. *Exhibit 1, Attachment b*. Olympic Air Pollution Control Authority (OAPCA) limits crushing activities to ten hours between 7 a.m. and 7 p.m. *Testimony of Ms. Morrell; Testimony of Mr. LeDuc*.
11. No sewer or water utility connections exist on-site. The Applicant would use water from an existing lake as process water. The Applicant currently uses sani-cans for sewage disposal, and stated that “the sani-cans would be hauled off-site.”<sup>2</sup> *Exhibit 1, Attachment b*.
12. The Applicant proposes to continue to use the existing service access to the gravel mine off Skookumchuck Road Southeast. The Applicant initially proposed to abandon the existing access point and move it west to a more practical location for the proposed expansion and the Thurston County Roads and Transportation Services Department granted a variance to allow the relocation.<sup>3</sup> However, based on the results of a noise study done by Michael Minor, the Applicant revised its proposal to retain the existing site access for employees and service vehicles. *Testimony of Mr. LeDuc*. The internal road system for hauling gravel to the coal mine would continue to include a private haul road that leaves the site to the south. Haul trucks would not use the Skookumchuck Road Southeast access. *Exhibit 1, Attachment b; Exhibit 1, Attachment j*.
13. As part of the expanded operation, the Applicant proposes to locate a 20-foot high berm along Skookumchuck Road and Tyrell Road to screen the gravel pit and to block noise. *Testimony of Ms. Pritchett*. Berms have a “shadow” effect, reducing noise more effectively nearer to the berm, and less effectively as the receiver’s distance from the berm increases. Similarly, the berm amplifies the noise on the side where the noise is generated. *Testimony of Mr. Minor*.

---

<sup>2</sup> It is assumed that the sani-cans would remain on the site and the waste would continue to be hauled off-site.

<sup>3</sup> The Applicant’s written application materials stated that the existing access would be abandoned and a new access west of the wildlife reserve would be used by employees and service vehicles.

14. The haul trucks have a 160-ton capacity and are approximately 18 feet wide, 25 feet long and 20 feet high. They carry gravel to the mine when road repairs are needed, most often during inclement weather. *Testimony of Mr. LeDuc.*
15. Pursuant to the State Environmental Policy Act (SEPA), Thurston County was designated as the lead agency for the review of environmental impacts resulting from the proposed use. Based on materials submitted by TransAlta, the County issued an MDNS on October 11, 2001. The MDNS contained 22 mitigating conditions that require the Applicant to generate no new traffic, use noise mitigation, perform noise monitoring, shield lighting, obtain all required Olympic Air Pollution Control Authority permits, use stormwater treatment and spill prevention measures, control erosion, perform ground water monitoring with increased frequency, implement the Air Quality Analysis, and protect the Oak Woodlands. *Exhibit 1, Attachment h.* The County submitted that the MDNS conditions would ensure that all more than moderate environmental impacts would be mitigated. *Testimony of Ms. Morrell.*
16. Gail Kaufman, John Kaufman, Cindy Homann, Tracy Homann, Lynn T. Johnson, and Robert Johnson (Gail Kaufman) filed an appeal of the MDNS on November 1, 2001. *Exhibit 2, Attachment b.* In their appeal, the Appellants specifically raised issues relating to ground water quality. *Exhibit 2, Attachment b.* In a subsequent appeal statement, the Appellants raised issues relating to noise.<sup>4</sup> *Exhibit 2, Attachment d.*
17. The Thurston County Mineral Extraction Code imposes restrictions on gravel mine operations and includes restrictions related to spill prevention, storage of fuel and hazardous materials, drainage and stormwater control, protection of ground and surface water from pollution by wash and other process water, damage to domestic water supplies, road standards, dust and smoke control, noise levels, hours of operation, fencing, lighting, ground water monitoring, and vibration control. *TCC Chapter 17.20.*
18. In a July 10, 2001 memo, the Thurston County Roads and Transportation Services Department submitted a comment on the application. The Department recommended preliminary approval subject to conditions including submission of soils evaluation forms; inclusion of a maintenance plan and forms; inclusion of section 10 of the drainage report, covenants, dedications, easements; provision of a revised drainage plan; showing

---

<sup>4</sup> Although the Applicant objected to the admission of evidence on the noise issue, the Hearing Examiner nonetheless admitted evidence and received testimony regarding noise impacts. A Hearing Examiner need not apply strict rules relating to evidence and procedure, and has discretion in the admissibility of all evidence. *Rules Of Procedure for Proceedings before the Hearings Examiner of Thurston County, Washington, Section 7.8b.* In response to the Pre-Hearing Order issued November 28, 2001, the Appellant was required to submit a statement of the issues of appeal, which allowed the Applicant an opportunity to respond to such issues prior to the hearing. The Appellant submitted the Appeal Statement on December 18, 2001, well in advance of the January 29, 2002 hearing. Furthermore, the Applicant was not prejudiced by admission of evidence related to noise impacts, as he had arranged to have a noise expert present for the duration of the hearing. *Exhibit 2, Attachment b; Exhibit 2, Attachment c; Exhibit 2, Attachment d.*



the proposed access location; and inclusion of cut and fill quantities. The Department submitted that it would not require traffic mitigation. *Exhibit I, Attachment i.*

19. The Thurston County Public Health and Social Services Department submitted a comment on the application dated October 11, 2001. The Department submitted that no existing public water supply was required; that no on-site sewage disposal system was required; that existing sani-cans were adequate; that existing diesel storage tanks were adequate; and that the fueling practices, procedures and spill prevention, and response plan were adequate. The Ground Water section of the Department reviewed the ground water monitoring plan and Hydrogeological Report for the proposed expansion, and concluded that the ground water monitoring plan was acceptable, and that the proposed expansion did not propose a significant quality or quantity risk to ground and surface water resources in the area. The Food Safety and Environmental Services section of the Department reviewed the noise study information, and determined that the noise levels generated by the existing mining operation meet Washington State and Thurston County requirements, and that the proposed expansion would not exceed the existing noise levels. The Department recommended approval subject to four conditions related to compliance with water monitoring and sampling requirements, submission of water and noise data to the Department, adherence to the hazardous materials handling and spill response plan, and approval of water and sewage plans prior to construction of any buildings. *Exhibit I, Attachment k.*
20. In reviewing impacts to water quality issues, the Thurston County Public Health and Social Services Department contacted neighboring landowners to investigate reports of contaminated wells. In a memorandum dated October 8, 2001, the Department commented on the water quality issues raised by Janet Duncan, C. and T. Homann, Lloyd Brown, and Rob and Cindy Johnson. *Exhibit I, Attachment l.*

In response to Ms. Duncan's concern about a film that forms on the surface of standing water, the Department concluded that such film is usually caused by algae, and is not a result of gravel mining. To support this conclusion, the Department submitted that mining typically depletes nitrates; growth of algae is a result of increased nitrates. *Exhibit I, Attachment l.*

In response to the Homanns' concern about several damaged wells in the vicinity, the Department submitted that the reported damaged wells had elevated nitrates and elevated iron. The Department concluded that neither of the two forms of contamination was caused by pit operations, but that the shallow depth of the wells made them vulnerable to a variety of water quality problems. *Exhibit I, Attachment l.*

In response to Mr. Brown's concern about water table drawdown, the Department determined that net effect of water table changes would be too small for Department instruments to separate from the normal fluctuations of the water table. *Exhibit I, Attachment l.*

In response to the Johnsons' concern about effects on the Skookumchuck River, the Department concluded that the summer base flow would be slightly reduced, and that there was a slight chance of a minor increase in turbidity. However, the turbidity would be too fine to precipitate out in ground water and surface water. *Exhibit 1, Attachment 1.*

21. The Applicant proposes to place a six square foot sign at the site. *Exhibit 1, Attachment b.*
22. The County Planning Staff recommended approval of the proposed expansion of the gravel mine. The staff based its recommendation on the conclusions that the proposal would not conflict with the provisions of the Thurston County Comprehensive Plan or the Thurston County zoning code; would not substantially change the character of the area; would not impose a burden on existing public facilities or services in the area; and would not conflict with TCC 17.20, the Mineral Extraction Code. The Planning Staff recommended imposing conditions related to compliance with the Thurston County Environmental Health Department and Roads and Transportation Services comment letters; compliance with MDNS conditions; compliance with the Mineral Extraction Code; review of the Special Use Permit every five years for compliance with conditions; compliance with all local, state, and federal permits and regulations; submission of a Washington State Department of Natural Resources approved reclamation plan; compliance with air pollution control requirements; compliance with state-mandated noise levels; installation of a noise-reduction berm; use of mufflers; use of ambient-sensitive back-up alarms; and operation consistent with the site plan. *Exhibit 1, Staff Report.*
23. Written notice of the public hearing was mailed to property owners within 2,600 feet of the site on January 15, 2002. Notice was also published in *The Olympian* on January 18, 2002. *Exhibit 1, Attachment a. Exhibit 1, Staff Report, page 2; Exhibit 2, Staff Report, page 2.*
24. The County received ten comment letters on the pit expansion application. All were opposed to the expansion. The comment letters expressed the following concerns:

Water quality issues: omission of total suspended solids data from monitoring well reports; potential for future contamination of existing wells in the vicinity; past contamination of wells in the vicinity; potential contamination of the Skookumchuck River, a salmon-bearing waterway; the County's determination of the minimum horizontal distance between an excavation and potable well under TCC 17.20.220; failure to perform reclamation of the existing pit according to its initial schedule; failure of the gravel mine to test neighbors' existing wells; and loss of seeping artesian waters.

Noise issues: increased noise; elimination of scenic views of Mt. Rainier by placement of berms; inadequate mitigation of noise at second-story levels; and excessive hours of operation.

Environmental issues: preservation of the last outwash prairies in Thurston County; preservation of Oregon White Oak trees; use of alternate sources of gravel in the area; increased dust; increased vibration; and commencement of excavation and grading prior to obtaining a permit.

Traffic issues: avoiding placement of the proposed Skookumchuck Road access at an unsafe area; increasing required setbacks at the northeast curve along Skookumchuck Road to preserve adequate sight distance; and increased traffic.

Other issues: characterization of the proposal as an expansion; failure to issue a SEPA checklist and reclamation and operations plan to neighbors; reduction of property values; appearance of fairness regarding County Commissioners visiting the steam plant; inaccuracies in the Environmental Checklist; past misinformation provided by the County;<sup>5</sup> and inadequate notice to neighbors.

*Exhibit 1, Attachment m; Exhibit 1, Attachment n; Exhibit 1, Attachment o; Exhibit 1, Attachment p; Exhibit 1, Attachment q; Exhibit 1, Attachment r; Exhibit 1, Attachment s; Exhibit 1, Attachment t; Exhibit 1, Attachment u; Exhibit 1, Attachment v.*

## **FINDINGS RELATING TO THE SEPA APPEAL**

### **Ground Water Monitoring Issues**

25. Since 1989, TransAlta and its predecessors have analyzed ground water samples from test wells 88E52 and 88E53, and since 1991, surface water samples from the quarry pool. The water quality report stated that these samples are typically analyzed for inorganic content including dissolved metals, hardness, alkalinity, nitrate, total iron, total manganese, total dissolved solids (TDS), and total suspended solids (TSS). Water samples collected from five monitoring locations in February 1992 were analyzed for turbidity. TransAlta also reported that bacteriological monitoring is done quarterly in the quarry pool, Schwarz well, and test wells 88E52 and 88E53. *Exhibit 2, Attachment w.*
26. The Appellant requested that the Applicant add additional wells to the monitoring plan, speculating that test wells 88E52 and 88E53 would be removed. The Appellant recommended monitoring ground water in shallow and deep wells and along the west and north sides of the proposed expansion site in between the existing monitoring wells and test wells 88E52 and 88E53. *Testimony of Mr. Varljan.* The Applicant proposes to add two additional monitoring wells, and to continue using test wells 88E52 and 88E53, but the locations of the new wells have not been determined. Although test well 88E52 has a

---

<sup>5</sup> Tracy and Cindy Homann commented that a County employee had informed them that any expansion of the gravel pit would be considered a new application, and would be required to comply with laws in effect at the time of application. It is not clear from the evidence that the County employee was incorrect, nor is it clear that the requirements would be more stringent if the Applicant applied to excavate a new pit rather than to expand an existing operation. *Exhibit 1, Attachment s.*

deformed lining that requires use of a nitrogen pump rather than the sampling method used in 88E53, the Applicant proposes to repair test well 88E52 to ensure that the sampling methods are uniform. *Testimony of Mr. LeDuc.*

27. The Applicant submitted in its Hydrogeological Report that due to its depth, high infiltration rate, and lack of an overlaying aquitard, the recessional outwash aquifer (the aquifer closest to the ground surface) is more susceptible to contamination than the deeper advance outwash aquifer.<sup>6</sup> The Hydrogeological Report concluded that many of the residential wells in the vicinity of the TransAlta pit produce water out of the Vashon Drift aquifer, which is hydraulically connected to the gravel pit lake, and that “[t]he susceptibility of a given water well to potential impacts caused by the Skookumchuck Gravel Pit is directly proportional to its proximity to the pit.”

Further, the report found that the gravel pit and its proposed expansion have a potential to have impacts on ground water in the vicinity, including the following: increased turbidity concentrations, increased susceptibility to bacteriological contamination, and degradation of inorganic water quality. Each of these factors was analyzed as follows.

- a. Suspended solids and turbidity: the Hydrogeological Report found that TSS, total iron and manganese concentrations in test well 88E52 and the Isom residential well were significantly elevated above the background levels. The report concluded that turbid water is a potential impact to residential wells located immediately downgradient of the proposed gravel pit expansion.
- b. Inorganic contaminants: the Hydrogeological Report found that there was no apparent difference in water quality in the test wells since 1992, and that maximum contaminant levels (MCLs) established by the Safe Drinking Water Act and WAC 246-290-310(3) were exceeded only four times since 1992. In September 1995, three wells exceeded the MCL standard for iron content, a secondary (aesthetic) drinking water standard. In September 1992, one well exceeded the MCL standard for lead, a primary (health-related) drinking water standard. The report concluded that the proposed pit expansion would not adversely impact downgradient inorganic or physical water quality.
- c. Bacteriological contaminants: the Hydrogeological Report found that significant counts of coliform bacteria including fecal coliform had been detected in the quarry pool, low counts of total coliform bacteria, usually without fecal coliform, had been detected in test well 88E53, and total coliform had been detected in test well 88E52 on one occasion since 1993. The report concluded that residential

---

<sup>6</sup> As discussed above, the hydrogeologic scientists who prepared the report stated that they were uncertain whether two separate aquifers exist under the project site. Geologic Cross Section Diagrams of the area were marked with question marks in the area where an aquitard separating the aquifers was expected. *Exhibit 2, Attachment w.* Based on the lack of conclusive evidence, the Hearing Examiner assumes that there are two aquifers on the site in order to prevent unnecessary aquitard penetration.

wells located immediately adjacent to the proposed pit may have increased potential for bacteriological contamination.

*Exhibit 2, Attachment w.*

28. The Hydrogeological Report submitted that ground water velocity near the site could theoretically range from 0.006 feet per day to 70 feet per day. The following data was included in the report: most dissolved contaminants would not migrate at the same rate or in the same flowpath as the ground water due to dispersion, diffusion, adsorption, and degradation; and suspended solids and bacteria in ground water would migrate at an even slower rate, due to increased adsorption and straining of solid media. *Exhibit 2, Attachment w.* However, the Department of Ecology (DOE) submitted that the on-site soils have a high permeability and low runoff rate, and that the potential for ground water to transport suspended sediment and other suspended solids is very high. *Exhibit 14; Testimony of Ms. Morrell.*
29. Based on comments issued by DOE related to National Pollutant Discharge Elimination System (NPDES) permit requirements, the Appellant argued that the Applicant failed to satisfy Total Suspended Solids (TSS) requirements under its General Permit for Wastewater Discharge for the Sand and Gravel Industry, issued by the DOE.<sup>7</sup> The Appellant specifically argued that the TSS exceeded the NPDES monthly maximum of 40 mg/l in test well 88E52 and the quarry pool and that the NPDES standards applied to the application. *Exhibit 2, Attachment b.* The Applicant responded that NPDES standards do not apply in the appeal because NPDES standards regulate discharges to surface water, but the issue on appeal is limited to ground water contamination. *Testimony of Mr. Bussey.*
30. The Appellant argued that the TSS and turbidity problems, demonstrated by the Applicant's monitoring wells, were significant and cannot be dismissed with a determination of nonsignificance. *Exhibit 2, Attachment b.* The County responded that the water quality problems were more likely to have originated from interactions with the wetland soils along the south side of the valley than to have been created by the gravel mine operation. *Exhibit 2, Attachment i, Testimony of Mr. Mead.*
31. The Appellant argued that TCC 17.20.200 (f) and (g) "require 'an analysis of turbidity, including a professional estimate of how far turbidity might be expected to be transported, based on overlying soil type, earth materials lateral to the mining activity, particular composition, pore sizes within the aquifer, the ground water flow velocity, and the chemistry of the ground water,'" and that the Applicant's analysis fell short of meeting the code requirements. *Appellant's Memorandum; Exhibit 2, Attachment d.*

---

<sup>7</sup> The DOE had submitted comments regarding the inadequacy of the description of the pollution prevention and water pollution control plan, and the insufficiency of field data in the report, and had requested additional information to determine whether more than one aquifer was present. *Exhibit 14.*

32. The Applicant responded that TCC 17.20.200 does not dictate requirements for hydrogeological reports, but gives County staff authority to determine the appropriate scope of analysis. In this application, County staff determined that past monitoring data negated the need to require additional ground water information. *Applicant's Memorandum.*
33. Thurston County Code provides:  
If a Hydrogeological Report is required by Chapter 17.15, the approval authority *may* require the report to include any of the following additional elements:  
F. An analysis of turbidity and water chemistry as related to the mining proposal. This includes a professional estimate of how far turbidity might be expected to be transported, based on overlying soil type, earth materials lateral to the mining activity, particle composition, pore sizes within the aquifer, the ground water flow velocity, and the chemistry of the ground water;  
G. Estimated effects of stormwater and process water.  
(Italics added.) *TCC 17.20.200.*
34. Thurston County Code provides: "If any gravel mining operation causes the water quality of any domestic water supply to fail to meet the drinking water quality standards of WAC 246-290, as amended, the mine owner shall remedy the effect of the operation on the water supply through monetary payment to the water system owner, the provision of treatment methods and devices that are approved by the State Department of Health, or other correction of the specific water quality problem." *TCC 17.20.080.*
35. The County submitted that turbidity could be corrected with filtration. *Exhibit 2, Attachment i; Testimony of Mr. Mead.* The Applicant also responded that elevated TSS and turbidity were not significant impacts, and that TSS is not a regulated contaminant. The Applicant argued there was no evidence that residential wells had been contaminated, but if contamination was discovered, residential wells could be treated. The Applicant further submitted that elevated levels of iron and manganese were secondary (aesthetic) impacts and were treatable. *Testimony of Mr. Bussey.*
36. Neighbors testified that wells in the vicinity of the existing gravel mine had become contaminated. John Kaufman testified that his 39-foot deep well had been tested in September 2001, and found to contain coliform bacteria. *Testimony of Mr. Kaufman.* The well of another property owner, Mike Isom, became contaminated and was purchased by TransAlta's predecessor. The well of Vernon Gobel also became contaminated and the well of a resident at the mine became contaminated, forcing the resident to move. *Testimony of Mr. Kaufman; Testimony of Ms. Kaufman.* John Grayless testified that turbidity, petroleum, *e. coli.*, and coliform had been detected in his 30-foot deep well. *Testimony of Mr. Grayless.* No direct causal link between the contaminants and the mining activities was proved. *Testimony of Mr. Kaufman; Testimony of Mr. Grayless.*

### **Noise Monitoring Issues**

37. The Applicant submitted a Noise Monitoring Program for the pit expansion. As a part of the monitoring program, the noise engineer proposed installation of sound level meters at six locations along the TransAlta property boundary. TransAlta staff who is trained in the operation of noise monitoring equipment would record weekly noise measurements for the first four weeks of the expanded operation. The frequency of continued testing would depend on whether noise levels were exceeded during the first four weeks. The noise measurements would be taken at least 5 meters from any solid structure, and at a height of 1.5 meters, pursuant to ANSI standards. Data would be tabulated and compared to permitted noise levels set by the Washington State Noise Control Ordinance and allowable exceedance limits. The results would be delivered to the County. *Exhibit 2, Attachment t; Testimony of Mr. Minor.*
38. Pursuant to Washington State Noise Control Regulations, the noise limit between 7:00 a.m. and 10:00 p.m. is 55 dBA. Between the hours of 10:00 p.m. and 7:00 a.m., the maximum allowable noise level is 45 dBA. *TCC 17.20.110; WAC 173-60-040(2)(a), (2)(b); Exhibit 18; Exhibit 2, Attachment w.* The regulations allow short exceedances of the maximum noise levels as follows: the noise level may be exceeded by 5 dBA for up to 15 minutes per hour; by 10 dBA for up to 5 minutes per hour; and by 15 dBA for up to 1.5 minutes per hour. *TCC 17.20.110; WAC 173-60-040(2)(c); Exhibit 18; Exhibit 10.* Thurston County's noise ordinances are more stringent than those of the State, as applied to the proposal because the mine is classified as Class A EDNA by the County, instead of Class C EDNA, as designated by the State. *Testimony of Ms. Park.*
39. The Appellant's interpretation of the law was that the Applicant is required to present a complete analysis of the noise to be generated by the specific equipment and usage on the site rather than using modeling, and that the noise to be generated by the proposed expansion had not been properly analyzed. *Exhibit 2, Attachment d.* The Appellant argued that the Applicant did not demonstrate its ability to comply with minimum noise requirements, failed to show the project would comply with Thurston County Code or state regulations in the Noise Impact Assessment, failed to analyze the increase in ambient noise to be suffered by the Appellants, and improperly used average energy sound levels over time inconsistent with the maximums required by County and State regulations. *Exhibit 2, Attachment d.*
40. The County responded to the Appellant's argument as follows. The County submitted that the noise generated by the trucks had not been modeled, but monitored at the property line, and at distances equivalent to those expected at the expanded position, and had been within the acceptable standards. The County further argued that a complete noise analysis was unnecessary because noise standards have been met in the past, and the Applicant was expected to continue to meet noise standards. The County also responded that the Noise Impact Assessment demonstrated that the project as proposed would meet the Thurston County and State regulations for noise. The County submitted that there was nothing to indicate that an increase of 10 dBA would occur on adjacent

properties. The County further submitted that the noise monitoring data was not reported as “averaged” values, and that the reference to Average Sound Levels in Table 2 was not the sole consideration in making the final assessment. *Exhibit 2, Attachment h.*

41. The Applicant submitted that the Noise Impact Assessment dated February 2001 included on-site noise measurements, not just data from other sites. The Applicant’s noise study stated that the noise due to excavation, crushing and loading of aggregate would generally be appreciably below Washington State noise limits because of the distance and the vegetated noise abatement berms between the mining activities and the nearby residences, and that under certain conditions, steady noise limits would be exceeded for short peaks, but the peak levels would fall within allowable short duration limits. *Exhibit 2, Attachment w.*
42. Michael Minor, the Applicant’s noise expert, performed sound modeling to estimate the sound levels that would exist on and off-site after the proposed expansion. In preparing his modeling, Mr. Minor set up numerous “receivers,” which recorded decibel calculations. Without any earth berms, a fully loaded haul truck would generate 88 to 90 decibels of noise.<sup>8</sup> Mr. Minor submitted that the haul trucks would run at close to the same RPM all the time, would not accelerate because they are too large, and would not be significantly noisier when going uphill. Mr. Minor further testified that the use of berms would mitigate the noise generated by the haul trucks so that no noise standards would be violated. The residential receiver expected to have the greatest noise impact is the Grayless residence adjacent to the southwest corner of the existing gravel mine. Mr. Minor submitted that he would expect the haul truck noise to be 65 dBAs at the Grayless property line with a berm, which would bring the noise within allowable exceedances. However, the Applicant does not propose to place a berm along the Grayless property line, and the haul truck noise has existed on the haul truck road for years. The Applicant does not propose to increase the number of haul trucks using the haul road. *Testimony of Mr. Grayless; Testimony of Mr. Minor.* Neighbors testified that the haul trucks make more noise when they go up and down hills. *Testimony of Mr. Grayless; Testimony of Ms. Homann.*
43. Mr. Minor submitted that the berms would reduce the noise by approximately 5 dBAs per meter of berm height, with a maximum reduction of 15 to 20 dBAs. He also estimated that the atmosphere would reduce noise by approximately 6 dBAs every time the receiver’s distance from the noise source doubles. *Testimony of Mr. Minor.*
44. Based on the results of sound level modeling, Mr. Minor found that the proposed expansion might exceed state noise standards at Receiver 1<sup>9</sup> where the perimeter berm

---

<sup>8</sup> Mr. Minor stated that the haul trucks’ “pass by rate” was 88-90 decibels. It is unclear from Mr. Minor’s testimony how close the receiving site would have to be to the haul road for the sound to reach 88-90 decibels.

<sup>9</sup> Receiver 1 represents the Kaufman property immediately north of the proposed expansion site. Receiver 2 represents the Homann property southwest of the proposed expansion site. Receiver 3 represents the Babbitt



would have an opening for a proposed employee/service entrance. He recommended that the Applicant continue to use the existing employee/service entrance in order to avoid locating a berm opening along Skookumchuck Road. With no opening in the berm, the projected noise levels would not exceed allowable State or County noise limits at any of the four receivers. *Exhibit 6.*

45. The Appellant's noise expert, Ioana Park, reviewed the Applicant's materials and the February 2001 Noise Impact Assessment and submitted that the Applicant failed to consider EPA Region X Guidelines that measure the increase in noise levels over existing levels at affected receivers to determine whether the noise level increase is significant (5-10 dBA) or serious (10 or more dBA). The EPA requires measurements to be taken at the setback of the residential receiving property. Based on the Applicant's existing daytime noise level measurements in the 40s dBA at Location 1, the noise levels would increase to the low 50s dBA if the mining equipment were within 550 feet of the receiving site. That increase of 5-10 dBA would be a significant noise impact according to EPA Guidelines. Ms. Park also projected that relocating the wash plant closer to residences would result in an increase of up to 12 dBA at receiver locations, and would constitute a serious noise impact according to EPA Guidelines. *Exhibit 10.* Mr. Minor submitted that the EPA Guidelines do not apply to the application because the federal government stopped regulating noise ten years ago, delegating its authority to the states. *Testimony of Mr. Minor.*
46. Ms. Park called into question the results of the noise modeling, rejecting the projected effectiveness of the berm, and the projected effectiveness of trees without a permanent tree buffer. Ms. Park projected that the noise levels (Leq) would range from the low to high 50s dBA, and would not comply with the Thurston County noise regulation limits of 55 dBAs during the daytime and 45 dBAs at night at relevant receiver locations. Ms. Park also rejected the Applicant's noise surveys on the grounds that they were not conducted at noise-sensitive residences, but within project boundaries and "possibly in immediate proximity to topsoil berms," where the topography would attenuate the noise. Ms. Park faulted the Noise Impact Assessment for failing to "clearly define the proposed locations of on-site trucks," arguing that there could be considerable noise impacts from trucks accelerating to exit the site at the new access point, which could not be shielded by perimeter berms. *Exhibit 10.* Ms. Park recommended supplementing the proposed monitoring locations with additional monitoring locations at the residences around the gravel mine, and that noise monitoring be conducted by an independent consultant, but provided no statutory authority for imposing this requirement. *Exhibit 11; Testimony of Ms. Park.*
47. Mr. Minor responded that the monitoring will be conducted by trained mine personnel, the data would be recorded by the monitoring equipment, and a computer would download the data directly from the monitoring equipment without any opportunity for

---

property south of the proposed expansion site. Receiver 4 represents property to the immediate east of the proposed expansion site. *Exhibit 6; Testimony of Mr. Minor.*

introduction of inaccuracies. The personnel would be trained to avoid monitoring within the shadow of the berm “as much as possible,” but may have to monitor near the berm to avoid entering private property without permission. *Testimony of Mr. Minor*. Ms. Park also recommended inserting language into the monitoring plan that would direct noise monitoring operators to take certain actions (e.g. notify certain parties or suspend mine operation) in the event noncompliance is found. *Testimony of Ms. Park*.

48. Neighbors testified that they hear the noise of the existing mine and that the mine equipment would be located closer to their residences as a result of the proposed expansion, increasing the noise impacts. *Testimony of Mr. Kaufman*. While the Applicant proposes to place a berm between the expansion site and the surrounding residences, neighbors expressed concern that the berm would not reduce noise at the second story level of residences. *Testimony of Ms. Kaufman; Testimony of Mr. Johnson; Testimony of Mr. Homann*.
49. Mr. Grayless testified that due to the presence of a wetland, there is no sound barrier to the east of his home, which is directly adjacent to the haul road. *Testimony of Mr. Grayless*.

#### **General Issues**

50. At the hearing, the Appellants contested MDNS condition 2(a), related to hours of mine operation, alleging that the condition allowed the mine to operate from 7 a.m. to 10 p.m., while the Thurston County Mineral Extraction Code only allows mining between 7 a.m. and 7 p.m., Monday through Saturday. The County agreed that the MDNS condition was incorrect. *Argument of Mr. Phillips; Testimony of Ms. Morrell; TCC 17.20.115(B)*.
51. The County Planning Staff recommended denial of the appeal, stating that all County, State and Federal regulations regarding noise and ground water have been analyzed and found to be within legal standards. *Exhibit 2, Attachment e*.
52. In addition to the comments listed in the general findings, the County received additional public comments related to the SEPA appeal. The comment letter raised issues related to hours of operation, ground water protection, and project duration. *Exhibit 2, Attachment p*.
53. In April 2001, the State of Washington Department of Ecology (DOE) submitted comments on the proposal related to omission of Appendix B and updating of all plans and Best Management Practices (BMPs) prior to expansion. *Exhibit 2, Attachment q*. DOE again submitted comments in November 2001 related to omission of Appendix B (Hydrogeological Report), updating of plans, BMPs, and water right permits. *Exhibit 2, Attachment s*.

54. The Washington State Department of Natural Resources submitted comments on the proposal related to requiring an expanded and revised reclamation plan, a hydrology study, and a geotechnical study making certain showings. *Exhibit 2, Attachment r.*

### **FINDINGS RELATING TO THE SPECIAL USE PERMIT APPLICATION**

55. The existing mining operation has been in continuous operation since 1973. The Thurston County Zoning Ordinance was adopted in 1980. The Applicant's predecessors obtained a Department of Natural Resources (DNR) Surface Mining Permit (No. 70-011089) on October 1, 1973. The Applicant is working with DNR to revise the existing Surface Mining Permit to include the proposed expansion. The Applicant stated that the pit was expanded in 1992, but no Special Use Permit was needed from Thurston County because the property boundary established by the Washington State Department of Natural Resources in 1973 included the area of expansion. At the time of the 1992 expansion, Thurston County determined that the 1992 expansion site was included in the preexisting grandfathered use. While Thurston County recognized the DNR permit, the record does not contain any evidence that it established nonconforming status for the mining operation. *Exhibit 1, Staff Report, page 3; Exhibit 2, Attachment f; Correction to Applicant's response to Appellant's Statement of Issues.*

### **CONCLUSIONS RELATING TO THE SEPA APPEAL**

#### Jurisdiction

The Hearing Examiner has authority to decide this appeal under the Thurston County Code and Chapters 35.63, 36.70B and 43.21C of the Revised Code of Washington.

#### Criteria for Review

A decision to issue a MDNS is reviewed under the "clearly erroneous" standard. *Anderson v. Pierce County*, 86 Wn. App. 290 (1997). However, "the mere fact that there exists credible evidence contrary to the tribunal's findings is not sufficient by itself to label those findings clearly erroneous." *Kepler v. Board of Trustee of Community College District 15*, 38 Wash.App. 729, 732 (1984). A finding is "clearly erroneous" when, although there is evidence to support it, the reviewing court (or examiner) on the record is left with the definite and firm conviction that a mistake has been committed. *Norway Hill Preservation & Protection Ass'n v. King County Council*, 87 Wash.2d 267. For the MDNS to survive judicial scrutiny, the record must demonstrate that "environmental factors were adequately considered in a manner sufficient to establish prima facie compliance with SEPA," and that the decision to issue a MDNS was based on information sufficient to evaluate the proposal's environmental impact. *Pease Hill*, 62 Wash.App. at 810, 816 P.2d 37 (citing *Sisley*, 89 Wash.2d at 85, 569 P.2d 712; *Brown v. City of Tacoma*, 30 Wash.App. 762, 766, 637 P.2d 1005 (1981)). The Appellant bears the burden of proof on appeal, but the municipality must base its initial decision on some credible evidence. *Cougar Mountain Associates v. King County*, 111 Wn. 2d 742 (1988).

Specific guidance relating to this project is provided by Thurston County. The TCC, in Section 17.09.150, grants authority for and sets limits on mitigation conditions. Subsection (B) states that the County may attach conditions so long as (1) such conditions are necessary to mitigate specific probably adverse environmental impacts identified in environmental documents prepared pursuant to this chapter, (2) the conditions are in writing, (3) the measures are reasonable and capable of being accomplished, (4) the county has considered whether local, state, or federal requirements and enforcement would mitigate an identified significant impact, and (5) the conditions are based on one or more policies listed in subsection (D).

#### Issues Raised On Appeal

1. In the SEPA appeal submitted November 1, 2001, the Appellant argued that the MDNS did not adequately mitigate probable significant adverse environmental impacts to ground water quality. *Exhibit 2, Attachment b.*
2. In the appeal statement submitted December 18, 2001, the Appellant argued that the MDNS also failed to adequately mitigate noise impacts. *Exhibit 2, Attachment d.*

#### Conclusions Based on Findings

1. **The County's decision to issue an MDNS was not clearly erroneous and therefore must be affirmed.**
  - a. The Appellant presented evidence that additional monitoring wells would contribute to a better awareness of the flow of contamination toward downgradient domestic wells. The Applicant presented evidence that test wells 88E52 and 88E53 would continue to be used for monitoring and that two additional wells would be added. The Appellant did not present any legal authority to support its argument. Although more monitoring wells would certainly provide more information, the failure to require additional monitoring wells does not rise to the level of clear error. *Findings of Fact Nos. 8, 15, 17, 19, 25, 26, 27, 28.*
  - b. The Appellant argued that test well 88E52 was defective. The Applicant rebutted the Appellant's argument with evidence that the well was damaged, required a different sampling method, and would be repaired as a part of the proposed expansion. The Hearing Examiner concludes that the Appellant did not meet its burden of proving that the well is defective or damaged in a manner that prejudices the sampling data or harms the Appellants in any manner. *Findings of Fact Nos. 8, 15, 19, 25, 26.*
  - c. The Appellant argued that an analysis of turbidity and water chemistry was required by TCC 17.20.200. However, an analysis of TCC 17.20.200(F) and (G) reveals that the provisions do not mandate an analysis of turbidity or water chemistry in ground water. The Appellant misreads the law. The word "may" is permissive. Section 17.20.200 gives the "approval authority" the discretion to require the additional ground water data. There is no evidence in the record that

the approval authority required the additional information, therefore it was not clear error to issue an MDNS when such information had not been provided. The County reviewed the application and concluded that monitoring data collected over the past 13 years negated the need to require additional ground water information. *Findings of Fact Nos. 8, 19, 25, 27, 31, 32, 33, 34, 35.*

- d. The Appellant argued that water samples from test well 88E52 and the quarry pool exceeded NPDES TSS standards. The Applicant responded that NPDES standards did not apply in the appeal because the standards apply to discharges to surface water, and the issue on appeal is ground water contamination, not surface water contamination. Comments submitted by the Department of Ecology suggested that NPDES permit requirements would apply to the application. However, compliance with surface water discharge standards is not before the Hearing Examiner on this appeal. *Finding of Fact No. 29.*
- e. The Appellant argued that TSS and turbidity were significant impacts that the Applicant should have been required to mitigate. However, the Thurston County Code does not require the Applicant to monitor TSS and turbidity. If the gravel mine caused a domestic water supply to fall below the state drinking water standards, the Applicant would be required to correct the conditions. The Applicant submitted that TSS and turbidity can be corrected with filtration if they develop in residential wells. Therefore, issuance of the MDNS without requiring mitigation of TSS and turbidity was not clear error. *Findings of Fact Nos. 30, 34, 35.*
- f. The Appellant presented evidence that residential wells in the vicinity of the existing gravel mine and proposed expansion had been found to contain bacterial contamination including total coliform and *e. coli*. The Applicant's Hydrogeological Report found that coliform bacteria was detected in the quarry pool, test well 88E52, and test well 88E53, and concluded that "hydrogeological impacts of expanding the existing gravel pit appear to be limited to increased potential for suspended solids and coliform contamination in residential wells located immediately downgradient (northwest) of the proposed expansion." Although there was no evidence that the gravel mine caused the coliform bacteria contamination, this conclusion suggests that the use of large water filtration ponds may contribute to the spread of bacterial contamination, even if the contamination originates elsewhere. However, the Appellants provided insufficient evidence that the presence of the gravel mine significantly increases the potential for contamination by contaminants that are placed in the soil by another source. The Appellants' sought to compel the Applicant to line the infiltration pond to reduce the spread of contamination, but did not provide sufficient evidence that lining the pit would achieve the desired result without detrimental impacts. *Findings of Fact Nos. 26, 27, 28, 36.*

- g. The Appellant argued that the proposed expansion would violate County noise standards at the Grayless property line. The Applicant used noise modeling to approximate the maximum expected noise levels, and assumed that a berm would mitigate the sound. With a berm, the Applicant submitted that the noise of haul trucks at the Grayless property line would be within allowable exceedances. However, the Appellant submitted that no berm exists at that property line due to the swamp terrain. The Applicant does not propose to construct a berm adjacent to the Grayless property. Although the Applicant failed to conclusively demonstrate that the haul trucks would comply with noise level restrictions at the Grayless property line, the Applicant did not have the burden of proof. The Appellant had the burden of proof, and failed to demonstrate that the proposed expansion would result in exceedance of the County noise standards. The Appellant also did not demonstrate that existing noise at the Grayless property line exceeds noise levels without mitigating measures; consequently there is insufficient evidence to find that issuance of the MDNS was clear error. *Findings of Fact Nos. 42, 43, 48, 49.*
- h. The Appellant argued that noise modeling was inadequate and site analysis was necessary. This argument is not persuasive. The Appellant did not provide any evidence that the noise modeling was inaccurate or faulty. The noise modeling was consistent with the State regulations. *Findings of Fact Nos. 44, 46.*
- i. The Appellant argued that an increase of 5-10 dBA at a sensitive receiver location was a significant impact according to EPA Region X Guidelines. The Applicant argued that the Region X Guidelines do not apply to the application because the federal government no longer regulates noise impacts. The Hearing Examiner concludes that guidelines generally do not carry the weight of law, and the Appellant failed to meet its burden of showing that the EPA Region X Guidelines should govern in this matter. *Findings of Fact Nos. 42, 45, 48.*
- j. The Appellant argued that noise monitoring should be performed at sensitive receiver locations. The Applicant need only comply with the Thurston County Code. No monitoring at residences or second floor heights is required under the Code. Therefore, it is not clear error to require monitoring at the TransAlta property line. *Findings of Fact Nos. 37, 48.*
- k. The Appellant argued that issuance of the MDNS was clear error based on its inclusion of hours of operation that would permit the Applicant to violate the Thurston County Mineral Extraction Code. The appeal is granted in part for the limited purpose of amending the MDNS condition to be consistent with the ordinances of Thurston County. *Finding of Fact No. 50.*

## CONCLUSIONS RELATING TO THE SPECIAL USE PERMIT APPLICATION

### Jurisdiction

The Hearing Examiner has jurisdiction to decide this Special Use Permit application under Thurston County Code 20.54.015 and Chapters 35.63, 36.70B and 43.21C of the Revised Code of Washington.<sup>10</sup>

Pursuant to TCC 20.54.050, the Hearing Examiner is authorized to impose such additional conditions, safeguards and restrictions upon the proposed use as it may deem necessary in the public interest.

### Criteria for Review

In order to grant a Special Use Permit, the Hearing Examiner must find that the application satisfies both general standards and use-specific standards applicable to the application. *TCC 20.54.020; TCC 20.54.040; TCC 20.54.070*. Those standards constitute criteria for the Hearing Examiner's decision, and are as follows:

#### General Standards:

1. "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." *TCC 20.54.040(1)*.
2. "The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea 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 this chapter." *TCC 20.54.040(2)*.
3. "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:
  - a. 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 the adverse effects may occur.

---

<sup>10</sup> The Thurston County provides that the Hearing Examiner is to hear and decide upon all applications for Special Use Permits except those enumerated in Thurston County Code 20.54.015(1). The Hearing Examiner assumes that he has jurisdiction under TCC 20.54.015(2); however, even if the subject application must be approved by the Development Services Department under TCC 20.54.015(1), the Hearing Examiner has jurisdiction over consolidated appeals. *RCW 36.70B.060*.

- b. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.”

*TCC 20.54.040(3).*

4. “For other uses consisting of a single business or use on a site in residential zoning district, there shall be no more than one two-faced sign not to exceed thirty-two square feet per side; or alternatively, two signs attached to the building below the roof line, or placed close to the building, with a combined square footage not to exceed thirty-two square feet.” *TCC 20.54.040(5)(c).*
5. “Multi-business sites shall be governed by Chapter 20.40.” *TCC 20.54.040(5)(d).*

Use-Specific Standards:

6. The application must be consistent with “all of the applicable standards” of Chapter 20.54 of the Thurston County Code, including TCC 20.54.070(21), the use-specific standards for mineral extraction and TCC 20.54.070(23.5), the use-specific standards for nonresidential nonconforming uses. *TCC 20.54.020.*

Other Regulations:

7. The application must be consistent with TCC Chapter 17.20, the Thurston County Mineral Extraction Code.

Conclusions Based on Findings

General Standards:

1. **The proposed use at the specified location would comply with the Thurston County Comprehensive Plan and all applicable federal, state, regional, and Thurston County laws or plans.** The County planning staff submitted that “the proposal, as conditioned, should not conflict with any of the Mineral Resource provisions of the Thurston County Comprehensive Plan.” The County staff did not provide its conclusions with respect to the proposal’s compliance with all applicable federal, state, regional and Thurston County laws or plans.

Thurston County Comprehensive Plan provisions applicable to the proposal include:

- Residential neighborhoods should be protected from incompatible land uses.
  - a. Neighborhood identity should be preserved by maintaining natural boundaries.
  - b. Vegetated buffers should be provided between arterials and residential developments, and between residential and non-residential land uses.*Thurston County Comprehensive Plan, Chapter II, Section VI, Goal 1, Objective B, Policy 11 (page 2-38).*
- Mineral extraction industries should be allowed to locate where prime natural resource deposits exist. *Thurston County Comprehensive Plan, Chapter III, Section V, Goal 7, Objective A, Policy 1 (page 3-29).*



- Restoration of mineral extraction sites should occur as the site is being mined. The site should be restored for appropriate future use and should blend with the adjacent landscape and contours. *Thurston County Comprehensive Plan, Chapter III, Section V, Goal 7, Objective A, Policy 4 (page 3-29).*
- Extraction industries should not adversely impact adjacent or nearby land uses, or public health and safety. *Thurston County Comprehensive Plan, Chapter III, Section V, Goal 7, Objective A, Policy 7 (page 3-29).*
- Areas where existing residential uses predominate should be protected against intrusion by mineral extraction operations. *Thurston County Comprehensive Plan, Chapter III, Section V, Goal 7, Objective A, Policy 9 (page 3-29).*
- Mineral extraction activities should not negatively effect nor endanger surface and ground water flows and quality. *Thurston County Comprehensive Plan, Chapter III, Section V, Goal 7, Objective A, Policy 10 (page 3-29).*
- Land uses that produce air pollutants and odors should comply with adopted air quality standards for the region. *Thurston County Comprehensive Plan, Chapter IX, Section IV, Goal 1, Objective C, Policy 1 (page 9-7).*
- The peace and quiet of residential neighborhoods should be provided for and maintained through the use of screens, open space, or other buffers, and controlled by noise standards. *Thurston County Comprehensive Plan, Chapter IX, Section IV, Goal 1, Objective C, Policy 2 (page 9-7).*
- Land uses or activities, which produce noises, should comply with the Washington State Noise Control Act and Thurston County laws. *Thurston County Comprehensive Plan, Chapter IX, Section IV, Goal 1, Objective C, Policy 3 (page 9-7).*
- The county should protect ground water aquifers, natural drainage, fish and wildlife habitat, public health and recreational functions of rivers, streams, lakes, wetlands, Puget Sound and their shorelines. *Thurston County Comprehensive Plan, Chapter IX, Section IV, Goal 2, Objective B, Policy 1 (page 9-12).*
- The county shall not allow uses and activities to degrade lakes, streams and commercial shellfish areas, recreational shellfish harvesting on public lands, or result in the loss of the natural functions of waterbodies, wetlands, and ground water aquifers. *Thurston County Comprehensive Plan, Chapter IX, Section IV, Goal 2, Objective B, Policy 4 (page 9-13).*
- The county should protect water quality and prevent aquifer contamination or degradation through the comprehensive management of the ground water resource in conformance with the principals contained in the *Northern Thurston County Ground Water Management Plan* and the *South Thurston County Aquifer Protection Strategy*. *Thurston County Comprehensive Plan, Chapter IX, Section IV, Goal 2, Objective G, Policy 1 (page 9-17).*

The Applicant proposes to provide vegetated berms, to perform appropriate reclamation and revegetation activities during and after completion of mining, to comply with conditions that would mitigate adverse impacts to adjacent and nearby residential land use, to avoid negatively affecting or endangering surface water and ground water, to comply with adopted air quality standards, to maintain noise buffers, to comply with

noise standards, to protect water quality, and prevent aquifer contamination. The record is silent as to whether existing residential uses “predominate” in the area, and as to what properties are encompassed by the term “area.” While there are numerous existing residential uses around the perimeter of the expansion site, the existing 237-acre gravel mine has operated on the existing site for almost 30 years, during which time some of the surrounding residences were constructed. The record does not support a conclusion that residential uses predominate in the area of the proposed expansion. Therefore, the proposed expansion would satisfy the policies of the Comprehensive Plan.

The record does not contain any evidence that the proposed expansion would violate any applicable federal, state, regional, or Thurston County laws or plans. *Findings of Fact Nos. 1, 2, 3, 4, 8, 10, 12, 13, 15, 17, 20, 38, 40, 43, 48, 49, 50, 51, 55.*

2. **The proposed use would comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements would be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.** The County planning staff submitted that “the proposed expansion is consistent with the purpose of continuing to make economic use of the natural resource found on-site. All requirements, including structure setbacks, landscaping and screening requirements will be met for this development.” The record does not contain any evidence that the proposed expansion would not comply with the provisions of the applicable zoning district regulations and subarea plans. *Findings of Fact Nos. 1, 2, 15, 22.*
3. **The proposed special use is appropriate in the location for which it is proposed.**
  - a. **The proposed use would 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.** The County submitted that the neighborhood character is a combination of rural residential, forestry, and agricultural activities and concluded that the facility would not substantially change the character of the area. The County further submitted that impacts related to air quality, ground water, noise, Oak Woodlands, hazardous materials, and traffic would be adequately mitigated. However, the record does not contain sufficient evidence to allow the Hearing Examiner to make a “specific finding” that the proposed special use would not result in substantial or undue adverse effects on adjacent property or neighborhood character. Additional information related to this criterion is necessary before the Hearing Examiner can find that the proposed special use would be appropriate in the proposed location. *Findings of Fact Nos. 1, 2, 3, 4, 5, 15.*

- b. **The use would be adequately served by and would not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.** The County submitted that the proposal would not impose any burdens on public facilities or services in the area. The gravel mine does not require water or sewer utilities, and the proposed expansion would not increase traffic at the site or in the vicinity. *Findings of Fact Nos. 7, 11, 12.*
- 4. **There would be no more than one two-faced sign not to exceed thirty-two square feet per side; or alternatively, two signs attached to the building below the roof line, or placed close to the building, with a combined square footage not to exceed thirty-two square feet.** The Applicant proposes to have one sign with an area of six square feet. *Finding of Fact No. 21.*
- 5. **The site would not be a multi-business site.** *Finding of Fact No. 1.*

Use-Specific Standards:

- 6. **The application would not be consistent with “all of the applicable standards” of Chapter 20.54 of the Thurston County Code.** Approval of the application requires compliance with use-specific standards. The applicable use-specific standards of Chapter 20.54 of the Thurston County code are as follows:
  - a. **The application would be consistent with TCC 20.54.070(21), the use-specific standards for mineral extraction.** The Applicant submitted all of the information required by TCC 20.54.070(21)(c). The record does not contain any evidence that the application does not satisfy TCC 20.54.070(21). *Findings of Fact Nos. 1, 15.*
  - b. **The application would not be consistent with TCC 20.54.070(23.5), the use-specific standards for nonresidential nonconforming uses.** TCC 20.54.020 provides: “No special use shall be issued unless the use complies with all of the applicable standards of this chapter and all other applicable requirements of this title.” *TCC 20.54.020.* Therefore, compliance with the use-specific standards for mineral extraction alone is not enough. The application must also comply with any other use-specific or general standards. TCC 20.54.070(23.5) contains use-specific standards for nonresidential, nonconforming uses in rural areas. The standards are as follows:
    - i. Expansion is limited to a maximum of fifty percent of the existing building square footage, or use area if no structure is involved, as of July 1, 1990, provided that all of the standards below are met.
    - ii. The expansion will occur on the same lot upon which the existing use is located.
    - iii. The expansion is visually compatible with the surrounding rural area.

- iv. Detrimental impacts to adjacent properties will not be increased or intensified.
- v. The expansion does not result in a formerly small operation dominating the vicinity.
- vi. The expansion will not constitute new urban development in the rural area.
- vii. Public services and facilities are limited to those necessary to serve the isolated nonresidential use and are provided in a manner that does not permit low-density sprawl.
- viii. The design standards of the underlying zoning district and all other applicable regulations are met.

*TCC 20.54.070(23.5).*

The Applicant submitted that it has never obtained a special use permit for its existing gravel mine, and that its operation predated the zoning code. If the existing operation is a nonconforming use, the proposed expansion would be required to satisfy each of the above provisions. The record is silent as to the County's classification of the existing gravel mine operation. The Hearing Examiner may not grant the Special Use Permit without a statement of the status of the existing operation (e.g. permitted use, special use, or nonconforming use). The existing gravel mine property would continue to be an integral part of the new mining operation. The existing roads, access point, berms, and surface water would be used in the mining, mitigation and reclamation of the proposed pit; therefore the new gravel pit is an expansion, as that term is used in TCC 20.54.070(23.5). Therefore, if the existing mine is determined to be a nonconforming use, additional information would be required to decide whether the expansion would be limited to a maximum of fifty percent of the use area as of July 1, 1990; whether the expansion would occur on the same lot upon which the existing use is located; whether the expansion would be visually compatible with the surrounding rural area; whether detrimental impacts to adjacent properties would be increased or intensified; and whether the expansion would result in a formerly small operation dominating the vicinity. *Findings of Fact Nos. 1, 12, 13, 55.*

Other Regulations:

7. **The application would be consistent with TCC Chapter 17.20, the Thurston County Mineral Extraction Code.** The County planning staff submitted that "the relevant Thurston County review agencies have reviewed this application against the provisions of TCC 17.20. The proposed expansion complies with all applicable provisions of TCC 17.20, subject to recommended conditions."

The Applicant proposed to continue using an approved Spill Prevention Control and Countermeasure Plan and submitted a Drainage and Erosion Control Report. *Findings of Fact Nos. 8, 15, 19.*

## DECISION

Based upon the preceding Findings and Conclusions, the request for a Special Use Permit to expand an existing 237-acre gravel mine onto an adjacent 40 acre parcel located at 6439 Skookumchuck Road Southeast, Tenino, Washington is REMANDED as set forth herein. The appeal of the MDNS is DENIED and the MDNS is upheld, on the condition that the hours of operation are amended as set forth herein.

The Special Use Permit Application is remanded to the Thurston County Department of Development Services for a determination of whether the existing gravel mine operation is a nonconforming use. Upon issuance of a County determination, the Hearing Examiner will consider reopening the open record hearing to determine whether this decision should be amended.

Decided this 28<sup>th</sup> day of March 2002.

---

James M. Driscoll  
Hearing Examiner for Thurston County

\\TCBLDG1D\VOL1\USERS\TC034A\COMMON\zoning.lu\DECISION\SUP\010195.Decision.TransAlta.doc