

**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	)	
_____	)	

**BACKGROUND**

On January 29 and February 4, 2002, the Hearing Examiner for Thurston County held a consolidated open record hearing on the application for a Special Use Permit and the appeal of an MDNS.

On March 28, 2002, the Hearings Examiner issued a Decision that remanded the request for the Special Use Permit to the Thurston County Department of Development Services (County) for a determination as to whether the existing gravel mine operation is a nonconforming use. The March 28, 2002 Decision granted the SEPA appeal for the limited purpose of amending an MDNS condition to be consistent with the ordinances of Thurston County. The SEPA appeal decision is not at issue.<sup>1</sup> *Decision issued March 28, 2002.*

Regarding the Special Use Permit application in the March 28, 2002 Decision, the Hearing Examiner held that additional information was necessary in order to determine whether the proposal could comply with the provisions of TCC 20.54.040(3)(a) and TCC 20.54.020. Those ordinances read as follows:

- “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:

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<sup>1</sup> All materials submitted by the parties since the open record hearing are made a part of the record in this matter.

- 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.” *TCC 20.54.040(3)*.
- The application must be consistent with “all of the applicable standards” of Chapter 20.54 of the Thurston County Code. *TCC 20.54.020*.

Specifically, the record did not contain information adequate to find that the proposed use would not result in substantial or undue adverse effects on adjacent property, neighborhood character, etc.

The record developed at the open record hearing also contained incomplete information that the existing gravel mine use might be a nonconforming use. Because one of the standards contained in Chapter 20.54 of the Thurston County Code (*TCC 20.54.070(23.5)*) addressed nonconforming uses, it was necessary to determine whether the existing use was a nonconforming use in order to ascertain whether that standard was “applicable.”

As a means of providing a more thorough record, the Hearing Examiner, in the March 28, 2002 Decision, remanded the matter to the County for “a statement of the status of the existing operation (a permitted use, a special use, or a nonconforming use).” The Decision stated that upon receipt of this information, the Hearing Examiner would consider reopening the open record hearing to determine whether the Decision should be amended. *Decision issued March 28, 2002*.

On April 11, 2002, the County issued a document titled “Thurston County’s Response on Remand,” in which it stated: “Since a gravel operation is *permissible through a special use permit* in the RRR 1/5 zone, Thurston County does not consider the gravel operation a nonconforming use.” The County argued that *TCC 20.54.070(23.5)* only applies to uses that predated enactment of the zoning code, and would not otherwise be permitted in the zone, even with a Special Use Permit. According to the County’s analysis, *TCC 20.54.070(23.5)* would not apply to a use that predated enactment of the zoning code if the use would be permitted by a Special Use Permit in the zone, regardless of whether the property owner obtained a Special Use Permit. *Thurston County Response on Remand dated April 11, 2002*.

On May 6, 2002, the Hearing Examiner issued an Order stating that the County’s determination of April 11, 2002 was made without consideration of certain evidence that the existing gravel mine might be a nonconforming use. Prior to acceptance of the County determination that the existing mining use is not a nonconforming use, and that *20.54.070(23.5)* does not apply, the Hearing Examiner would require additional evidence that the use is not a nonconforming use. In an Order again remanding the Decision to the County, the Hearing Examiner stated that upon

receipt of a County determination regarding the status of the existing mine, the Hearing Examiner would schedule a remand hearing to address the application of TCC 20.54.070(23.5) and whether the proposed special use would not result in substantial or undue adverse effects on adjacent property or neighborhood character.<sup>2</sup> *Order issued May 6, 2002.*

On June 6, 2002, the County submitted a second “Response on Remand,” which provided the facts that supported its determination that the existing gravel mine use was not a nonconforming use. The County based its determination on the following facts:

- The existing gravel mine was established prior to adoption of the Thurston County zoning code;
- In 1973, the existing mine obtained a Surface Mining Permit from the Washington State Department of Natural Resources;
- The existing mine complies with Thurston County Code chapter 17.20; and
- No County permit is required for the existing mine.

The County concluded that “it is the history and intent of TCC 20.54.070(23.5) to apply exclusively to uses not otherwise allowed within the underlying zoning district. A gravel mine is a permitted use through the Special Use Permit process within the RRR 1/5 Zone under the current Zoning Ordinance. Therefore, TCC 20.54.070(23.5) is not relevant to the existing mine. The existing mine conforms to the applicable provisions of the Thurston County Ordinance and is not subject to the definition of nonconforming.” The County further argued that the application to mine the 40-acre parcel could stand alone with a separate Special Use Permit instead of as an expansion of the existing mine, and that TCC 20.54.070(23.5) does not apply to a project that could obtain a Special Use Permit independently of the existing adjacent use. In response to the Hearing Examiner’s request for a classification of the status of the existing mine (permitted use, special use, nonconforming use), the County stated that “these terms, as defined in the Thurston County Code, are not applicable to the existing mine.” *Thurston County Response on Remand dated June 6, 2002.*

On June 21, 2002, Richard Phillips, attorney for the Appellants, submitted a letter that argued that the existing 237-acre gravel pit is a nonconforming use, and that the proposal to mine the adjacent 40-acre parcel constituted an “expansion” of the existing gravel mine, subject to the requirements of TCC 20.56.<sup>3</sup> *Letter from Richard Phillips dated June 21, 2002.*

On June 27, 2002, Glenn Amster, attorney for the Applicant, submitted a letter that argued that the existing use is not a nonconforming use; that the intended purpose of Chapter 20.56 TCC is to apply when a use is not permitted under a zoning ordinance; that the proposal to mine the

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<sup>2</sup> The Hearing Examiner also stated that the County’s request for reconsideration of the Decision pertaining to this criterion would be addressed in conjunction with the remand.

<sup>3</sup> Mr. Phillips represented the SHA, which filed an appeal of the SEPA determination. At the open record hearing the Appellants’ attorney Phillips did not address the Applicant’s compliance with Special Use Permit criteria and the Appellants limited their participation to the MDNS appeal. However, because the permit review and SEPA appeal were consolidated into one hearing, Mr. Phillips’ legal brief on the Special Use Permit is properly a part of the record in this matter. The SEPA appeal is no longer at issue in this matter. No objection was made to Mr. Phillips’ participation in the SUP proceedings following the closure of the SEPA appeal.

adjacent 40-acre parcel does not constitute an “enlargement” of a nonconforming use; and that consequently, TCC 20.54.070(23.5) does not apply to the proposal. *Letter from Glenn Amster dated June 27, 2002.*

On July 31, 2002, the Hearing Examiner issued an Order that concluded that the existing gravel mine is a nonconforming use, and that 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. The Hearing Examiner ordered that the record be reopened to allow the presentation of evidence and testimony at an open record hearing, in order to determine whether the Applicant complies with the use-specific standards contained in TCC 20.54.070(23.5). The Hearing Examiner also ordered the parties to present evidence and testimony related to adverse effects on adjacent property and neighborhood character at the reopened open record hearing in accordance with the Decision of March 28, 2002.

## **SUMMARY OF RECORD**

### **Hearing Date**

The Hearing on the SEPA appeal and the Special Use Permit was commenced on January 29, 2002, and was continued for additional testimony on February 4, 2002. Pursuant to the Order dated July 31, 2002, the record was reopened for limited additional testimony and evidence on October 7, 2002.

### **Testimony**

At the October 7, 2002 open record hearing, the following presented testimony and evidence:

1. Nancy Pritchett, Thurston County Department of Developmental Services
2. Tim LeDuc, appearing on behalf of the Applicant
3. Michael Minor
4. Doug Howie
5. Mike Kain, Thurston County Planning Manager

Attorney Jeff Fancher represented Thurston County. Attorney Glenn Amster represented the Applicant. Attorney Richard Phillips represented the Skookumchuck Neighborhood Association.

### **Exhibits**

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. Pearch, Washington Department of Ecology regarding 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 regarding 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

**Exhibits Made Part of the Record as of the July 31, 2002 Order issued by Hearing Examiner to Reopen the Hearing**

- EXHIBIT 22 Thurston County's Response on Remand dated April 11, 2002
- EXHIBIT 23 Hearing Examiner Order issued May 6, 2002
- EXHIBIT 24 Thurston County's Response on Remand dated June 6, 2002
- EXHIBIT 25 Letter from Richard Phillips dated June 21, 2002
- EXHIBIT 26 Letter from Glenn Amster dated June 27, 2002
- EXHIBIT 27 Hearing Examiner Order dated July 31, 2002

**Exhibits Admitted at the October 7, 2002 Open Record Hearing**

- EXHIBIT 28 Index to Applicant's Photos of Surrounding Rural Area dated October 7, 2002
- EXHIBIT 28-A Large Map Depicting Overview of Project Site Marked with Locations Photos Were Taken
- EXHIBIT 29 State of Washington Department of Natural Resources Operating Permit No. 70-011089

The records of all 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.

**FINDINGS OF FACT**

Findings of Fact Nos. 1-55 of the March 28, 2002 Decision are hereby adopted by reference.

Findings Related to Applicability of TCC 20.54.070(23.5)

56. In the Order dated July 31, 2002, the Hearing Examiner concluded that Thurston County Code (TCC) Section 20.54.070(23.5) was an applicable standard pursuant to TCC 20.54.020, and that "[t]he Applicant must demonstrate compliance with the standards contained in TCC 20.54.070(23.5) in order to obtain a special use permit for its proposed 40-acre expansion." *Exhibit 27.*
57. At the October 7, 2002 open record hearing, the County argued that an Applicant for a Special Use Permit (SUP) looks through the provisions of TCC Chapter 20.54 and chooses one of the provisions to apply under. Here, the Applicant elected to apply for a

SUP as a gravel mine, not as an expansion of an existing use.<sup>4</sup> The County submitted that the Applicant would not have satisfied the standards for expansion, so it did not apply under the section applicable to nonconforming uses. *Statement of Mr. Fancher.*

58. The County further argued that if a different Applicant were to request a SUP, the County would not consider land uses on adjacent properties in deciding whether to grant the SUP. According to the County, the Applicant is seeking a SUP for a new use, and the existing adjacent use should not be considered as a part of the SUP review. *Statement of Mr. Fancher.*
59. TCC 20.54.070(23.5) provides:

Nonresidential, Nonconforming use in Rural Area.

- a. Purpose. To provide limited expansion of isolated commercial or industrial businesses, legally established on or before July 1, 1990, that may not be principally designed to serve the existing or projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Such expansion shall meet all of the standards listed below. Conversion of such uses may be considered pursuant to Section 20.56.060. This special use category applies exclusively to nonconforming uses.
- b. Standards.
  - 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).*

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<sup>4</sup> The SUP use-specific standards of the TCC do not refer to “gravel mines” or “expansions.” The Hearing Examiner assumes the County was referring to Table 1 of TCC 20.54.065(5), which lists the uses permitted by SUP within specific zones. Mineral extraction is listed as a use permitted by SUP in the RRR 1/5 zone. *TCC 20.54.065(5) Table 1(21)*. The table also lists “Nonresidential use in rural area” as a use permitted by SUP in the RRR 1/5 zone. *TCC 20.54.065(5) Table 1(23.5)*. “Expansion” is not listed among these uses.



60. The County and the Applicant argued that TCC 20.54.070(23.5) does not apply to the Applicant's proposal because the ordinance was intended to apply when no other use-specific standards apply to a SUP request. Here, the Applicant requested a SUP to establish a mineral extraction operation, which is governed by use-specific standards. Consequently, the County and Applicant argued that TCC 20.54.070(23.5) is not an applicable section pursuant to TCC 20.54.020, which provides that "[n]o 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; Statement of Mr. Fancher; Statement of Mr. Amster.*
61. The Applicant argued that subsection a of TCC 20.54.070(23.5) (the Purpose section) limits the provision's application to expansions of nonconforming uses that are industrial or commercial in nature, and that are out of character with the area. The Applicant contended that the ordinance controls incongruent operations that are "out of place" in the rural area. The Applicant argued that the Applicant's gravel mine directly serves an adjacent coal mining operation, and its existence near the coal mine minimizes impacts by keeping gravel trucks on internal haul roads. The Applicant further argued that an expansion of a nonresidential, nonconforming use in a rural area is governed by TCC 20.54.070(23.5) unless the use does not fall within the parameters of the Purpose section. *Statement of Mr. Amster.*
62. The Applicant argued that TCC 20.54.070(23.5) was not intended to be applied to mineral extraction uses and it should not be applied to mineral extraction uses. Because the land is inherently exhausted as a part of a mineral extraction use, expansion of this type of use cannot be limited to the site of an existing mineral extraction use. *Statement of Mr. Amster.* Expansion within the existing lot is not feasible, as the resources have been depleted. *Testimony of Mr. LeDuc.*
63. The Skookumchuck Homeowners' Association (SHA) argued that TCC 20.54.070(23.5) is an applicable standard pursuant to TCC 20.54.020, and it applies to the proposed expansion. The SHA also argued that the Purpose section should not cause the proposal to fall outside the scope of TCC 20.54.070(23.5) because the coal mine served by the gravel mine is not immediately adjacent, as suggested by the Applicant, but is located miles away. The SHA also argued that the SUP for the proposed expansion must take into account the existing mine operation, because unlike the County's scenario of a new company seeking a new SUP, here the Applicant will not confine its expansion to the 40-acre site. The Applicant proposes to continue using the existing parking, haul road, and potentially other secondary uses on the 237-acre site. *Statement of Mr. Phillips.*

Findings Related to Compliance with TCC 20.54.070(23.5)(b)(i)

64. The Applicant presented testimony that the existing gravel mine has been in operation on 237 acres since 1972. The original Surface Mining Permit issued by the Department of Natural Resources applied only to the 237 acres. (See Background section.) In 1988, the Applicant purchased the 40 acres of land onto which it proposes to expand. *Testimony of*

*Mr. LeDuc.* The use area is equivalent to the area under permit in the context of mineral extraction. *Statement of Mr. Amster.*

65. The SHA argued that nothing in the record has identified what the area of expansion is as compared with the existing use area, and TCC 20.54.070(23.5)(b)(i) is not satisfied. The SHA submitted that the Applicant must establish the number of acres in use as of July 1, 1990. *Statement of Mr. Phillips.*

Findings Related to Compliance with TCC 20.54.070(23.5)(b)(ii)

66. The Applicant argued that the term “lot” is defined by the Thurston County Code, and that no lots are involved in the proposed expansion. The 40-acre expansion site, therefore, cannot be described as a separate lot. *Statement of Mr. Amster.*
67. The Applicant argued that the proposed 40-acre expansion site was not part of the DNR permit, and therefore should not be construed as the same “lot.” *Statement of Mr. Phillips.*
68. The Thurston County Code does not define the term “lot,” it does provide the following definition of “lot of record”:

Lot of record means “A lot shown as a part of a recorded subdivision, or any parcel of land described by metes and bounds in a recorded deed, record of survey or other appropriate document recorded in the office of the County Auditor.”

*TCC 20.03.040(82).* This definition is illustrative of the County’s intent that “lot,” as it is used in TCC 20.54.070(23.5)(b)(ii), is a portion of the land that can be separately described and conveyed.

69. The Applicant purchased the proposed expansion site from private landowners, who were not part of the ownership of the existing 237-acre mine. *Exhibit 2, Attachment k; Exhibit 2, Attachment m.*

Findings Related to Compliance with TCC 20.54.070(23.5)(b)(iii)

70. The Applicant submitted photos of the surrounding rural area, taken within two miles of the proposed expansion site. These photos depicted a vacant field, agricultural structures, a rock quarry, a dirt motocross track, hillsides that had been clear cut, agricultural uses including a field of Christmas trees and a field of hay, and portions of the existing gravel mine operation, as seen from the proposed expansion site and road. *Exhibit 28.*
71. The SHA argued that the Applicant had provided no evidence of the proposed landscaping on-site; therefore, the record does not contain evidence the proposed expansion site would be visually compatible with the surrounding rural area. *Statement of Mr. Phillips.*

Findings Related to Compliance with TCC 20.54.070(23.5)(b)(iv)

72. The Applicant's noise expert testified that the noise caused by the proposed expansion would not increase the detrimental impacts to adjacent properties. While the proposal would cause a slight increase in noise levels, these levels would remain within the Washington noise standards. In response to questions posed by the SHA, the Applicant's noise expert testified that an increase of 10 dBA would double the noise levels, but that any doubling of noise levels on-site would not violate the Washington Administrative Code (WAC) noise level standards. *Testimony of Mr. Minor.*
73. The existing noise levels are between 40 and 55 dBA, and occasionally rise to 60 dBA. Noise levels as measured are averaged over time; consequently, a noise level measurement would not be significantly increased by the noise of a vehicle passing on the road. Because the measured noise level is averaged over time, the noise level reflects the quietest moments as well as the loudest moments. Other noise sources in the vicinity may be louder than the mining operation. The Applicant's noise expert testified that he had not measured the clanking noise caused by the tailgates of haul trucks. The Applicant's noise expert testified that Washington law requires the Applicant to maintain noise levels of less than 55 dBA at the property line at all times; and that this noise level would be quieter than an urban setting. *Testimony of Mr. Minor.*
74. The Applicant submitted testimony that detrimental impacts on water quality would not intensify or increase as a result of the proposed expansion; however, if the proposed use causes impacts to water quality, the impacts would occur earlier. The proposed pit would be north of the existing pit, shortening the distance between the gravel mine and adjacent residences in the same general direction as ground water movement. Although the ground water would have a shorter distance to travel before reaching residential wells, with water quality monitoring, increases in the flow of suspended solids would be identified before the ground water reaches the road. *Testimony of Mr. Howie.*
75. The SHA argued that the noise and water quality impacts from the proposed expansion would constitute an increase or intensification of detrimental impacts to adjacent properties. The SHA submitted that mitigation is required where detrimental impacts exist; in the instant matter, noise and water quality impact mitigation is required. Consequently, the noise and water quality impacts are detrimental impacts. They argued that the noise standards contained in the WAC are irrelevant to a determination of whether a proposed noise level increase would be detrimental. Because the proposed expansion would cause water quality impacts to reach area residential wells earlier; the impact would be intensified. *Statement of Mr. Phillips.*

Findings Related to Compliance with TCC 20.54.070(23.5)(b)(v)

76. The Applicant argued that based on an existing land use of 237-acre tract, and a proposed expansion to a 40-acre tract, the expansion would not dominate the vicinity. *Statement of Mr. Amster.*

77. The SHA argued that the gravel mining operation was formerly a small operation, and would now dominate the area. *Statement of Mr. Phillips.*

**Findings Related to Compliance with TCC 20.54.040(3)(a)**

78. The Applicant submitted that the existing mineral extraction operation has proven to have few, if any, detrimental impacts to surrounding properties. The expansion, as proposed, would not exacerbate or create detrimental impacts to the neighborhood, and there would be no substantial or undue adverse effects. *Statement of Mr. Amster.*
79. The Applicant's noise expert testified that the noise caused by the proposed expansion would not result in substantial or undue adverse effects. *Testimony of Mr. Minor.*
80. The Applicant's water quality expert testified that the proposed expansion would not result in substantial or undue adverse effects to water quality. *Testimony of Mr. Howie.*

## **CONCLUSIONS**

**Jurisdiction**

As stated in the March 28, 2002 Decision, 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.

**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:<sup>5</sup>

**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).*

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<sup>5</sup> The Decision issued March 28, 2002 concluded that the Applicant complied with the following general and use-specific standards: TCC 20.54.040(1), TCC 20.54.040(2), TCC 20.54.040(3)(b), TCC 20.54.040(5)(c), TCC 20.54.040(5)(d), TCC 20.54.070(21), and TCC Chapter 17.20. For the purpose of clarity, this Decision restates conclusions reached in the Decision dated March 28, 2002 to the extent that they still apply.

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.
  - 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.*

TCC 20.54.070(23.5) provides as follows:

Nonresidential, Nonconforming use in Rural Area.

- a. Purpose. To provide limited expansion of isolated commercial or industrial businesses, legally established on or before July 1, 1990, that may not be principally designed to serve the existing or projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Such expansion shall meet all of the standards listed below. Conversion of such uses may be considered pursuant to Section 20.56.060. This special use category applies exclusively to nonconforming uses.
- b. Standards.
  - 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.
- ix. The design standards of the underlying zoning district and all other applicable regulations are met.

*TCC 20.54.070(23.5).*

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. The existing mineral extraction operation has had few, if any, detrimental impacts to surrounding properties. The Applicant’s expert witnesses testified that the proposed expansion would not result in substantial or undue adverse noise or water quality effects. *Findings of Fact Nos. 1, 2, 3, 4, 5, 15, 78, 79, 80.*
  - 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.
    - i. **Expansion will be 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.** As of July 1, 1990, the Applicant had a Surface Mining Permit that permitted mineral extraction on the 237-acre site. Although the Applicant did not testify how much of the land had been used for mineral extraction as of July 1, 1990, the use area is equivalent to the area under permit in the context of mineral extraction. *University Place v. McGuire, 144 Wn.2d 640 (2001); Findings of Fact Nos. 64, 65.*
    - ii. **The expansion will not occur on the same lot upon which the existing use is located.** The Applicant did not own the proposed expansion 40-acre tract when it commenced mining on the 237-acre site. The existing mine has been in operation since 1972. The original Surface Mining Permit issued by the Department of Natural Resources applied only to the 237 acres. The Applicant purchased the proposed expansion site in 1988, apparently from private property owners including Walter Johnson. The

record does not contain any evidence that the existing 237-acre mine site and the 40-acre proposed expansion site were ever commonly owned. Because the expansion site was purchased in 1998, the 237-acre and 40-acre sites are not “the same lot” as that phrase is used in the Thurston County Code. *Findings of Fact Nos. 64, 66, 67, 68, 69.*

- iii. **The expansion is visually compatible with the surrounding rural area.** The Applicant submitted photographs of surrounding land uses including a vacant field, agricultural structures, a rock quarry, a dirt motocross track, hillsides that had been clear cut, agricultural uses including a field of Christmas trees and a field of hay, and the existing gravel mine. With berms and landscaping similar to those around the existing gravel mine, the proposed expansion would be visually compatible with the surrounding rural area. *Findings of Fact Nos. 70, 71.*
- iv. **Detrimental impacts to adjacent properties will not be increased or intensified.** While the proposal would cause a slight increase in noise levels, these levels would remain within the Washington noise standards. In response to questions posed by the SHA, the Applicant’s noise expert testified that an increase of 10 dBA would double the noise levels, but that any doubling of noise levels onsite would not violate the Washington Administrative Code (WAC) noise level standards. The proposal would also shorten the distance that ground water would travel between the gravel mine and adjacent residences. However, it is not clear that the gravel mine would endanger the ground water quality of surrounding residences. Many of the neighbors testified that they have never used the ground water as a drinking source. The ground water contamination in the vicinity has not been linked to the gravel mine. Therefore, the potential impacts of the proposed expansion do not rise to the level of detrimental impacts. *Findings of Fact Nos. 72, 73, 74, 75.*
- v. **The expansion will not result in a formerly small operation dominating the vicinity.** Other land uses in the vicinity include single-family residences, agriculture, recreation, forestry, and mineral extraction. The record does not contain evidence to support a conclusion that the proposed expansion would result in a gravel mine dominating the vicinity. *Finding of Fact No. 70, 76, 77.*
- vi. **The expansion will not constitute new urban development in the rural area.** The record does not contain any evidence that the proposed expansion would constitute new urban development.

- 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.** The Applicant does not propose a public service or facility.
- viii. **The design standards of the underlying zoning district and all other applicable regulations are met.** The record does not contain any evidence that the proposal would fail to meet any design standards or applicable regulations.

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 DENIED as set forth herein.

DECIDED this 24<sup>th</sup> day of October 2002.

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James M. Driscoll  
Hearing Examiner for Thurston County

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