

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2018102294, GRAVEL MINE
FOLDER NO.: 18 105468 ZM
TAX PARCEL NOS.: 09770001000
LOCATION ADDRESS: 11006 Old Highway 99 S.E., Olympia
APPLICANT: Deshutes Aggregate and Recycle, Inc.
P.O. Box 14451
Tumwater, WA 98501
PLANNER: Leah Davis, Associate Planner

SUMMARY OF REQUEST:

Five year review of a Special Use Permit for an existing gravel mine located at 11006 Old Highway 99 S.E., Olympia.

SUMMARY OF DECISION: Request granted, subject to conditions.

DATE OF DECISION: March 7, 2019

PUBLIC HEARING:

After reviewing the Community Planning and Economic Development Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on February 26, 2019, at 10:45 a.m.

Parties wishing to testify were sworn in by the Examiner.

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

- EXHIBIT "1"** - **Community Planning and Economic Development Department Staff Report**
- Attachment a** - **Notice of Public Hearing**
- Attachment b** - **Master Application**
- Attachment c** - **Special Use Permit Application**
- Attachment d** - **Complete Application Letter**
- Attachment e** - **Site Plan**
- Attachment f** - **Notice of Application with Mailing List**
- Attachment g** - **SEPA Determination of Non Significance for Original SUP 14-88**
- Attachment h** - **Decision for SUP 14-88**
- Attachment i** - **MDNS for SUPT 98-0607**
- Attachment j** - **Decision for 5 Year Review dated November 22, 1999**
- Attachment k** - **Decision for 5 Year Review dated January 9, 2008**
- Attachment l** - **Decision for 5 Year Review dated May 5, 2014**
- Attachment m** - **Comment Letter from Ecology**
- Attachment n** - **Comment Letter from TC Noxious Weeds**
- Attachment o** - **Noxious Weed Management Plan**
- Attachment p** - **Two Emails from Noxious Weeds**
- Attachment q** - **Comment Memo from TC Environmental Health**
- Attachment r** - **Comment Letter from Nisqually Indian Tribe**
- Attachment s** - **Supplemental Application Booklet**
- Attachment t** - **Photos of Public Hearing Notice Posting**
- Attachment u** - **Comment Letter from Dale Drewry**
- Attachment v** - **Oversize 5 Year Update Map**

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

LEAH DAVIS appeared, presented the Planning and Economic Development Staff Report, and testified that mining occurs on 50 acres of a 110 acre parcel. The original mining permit was approved in 1988 for 30 acres that was expanded to 50 acres in 1998. The Thurston County Code requires a five year review period for mines. The applicant proposes no expansion or intensification of the principal use. Mining is not allowed in the site's present zone, but mining was allowed at the time of original application. SEPA review occurred in both 1988 and 1998 and is not required now. The mine was last reviewed in 2013 and found out of compliance. One of the compliance issues was the previous owner's failure to apply for a five year review. Issues also included lack of approval vegetation management noxious weed plans. The mine was purchased by the present applicant in 2016, and the special use permit follows the property. Staff finds that the new owner is now in compliance with all conditions. DNR has issued a reclamation plan. Staff recommends approval subject to ten conditions.

GEORGE BARNES appeared and testified that he is the product manager of the mine and has no questions or concerns regarding conditions of approval.

RON NELSON appeared and testified that he has a farm next door and the mine has been a really good neighbor. He would rather have the mine than 100 homes with dogs chasing cattle.

LEE REMER and testified that she recommends denial of any extension for an out of compliance gravel pit. She referred to several findings of Examiner Sharon Rice's decision issued May 5, 2014, finding the mine out of compliance. She questioned why there is no current DNR permit and how far below the mine is the groundwater? We should be looking at the depth of the mine as it is near the Deshutes River. The County needs to monitor all of the groundwater and she has not seen an ORCAA permit. This mine has been allowed to violate the law and the County needs to enforce the conditions. She requests a public hearing pursuant to Condition 17 (10) on page 7 of the Rice Decision.

MR. BARNES reappeared and testified that they do have a noxious weed plan and a current DNR reclamation plan. They also have a permit with ORCCA. They have not excavated to the groundwater.

MS. DAVIS reappeared and testified that the cited findings of fact were from Ms. Rice's Decision and not from the Staff Report. The findings addressed the previous application that was approved by Examiner Rice subject to compliance with conditions that included bringing the mine into compliance.

MR. BARNES reappeared to testify that the 40 feet is from the reclamation permit from DNR.

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

NOTE: A complete record of this hearing is available in the office of the Thurston County Resource Stewardship Department.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. The mining operation was reviewed pursuant to the State Environmental Policy Act (SEPA) for the original Special Use Permit (SUP 14-88) and the 30 acre expansion

(SUPT 98-0607/SUPT 98-0681). For the proposed five year review, staff considered both of the threshold Mitigated Determinations of Non-significance issued in August 1988 and September 1999. The proposed 5-year review is exempt from SEPA as no expansion or intensification is proposed.

3. Written notice of the public hearing was sent to all parties of record on February 7, 2019. Notice of the public hearing was published in The Olympian on February 15, 2019, at least ten (10) days prior to the hearing. Notice was posted on site on February 15, 2019.
4. On April 27, 2018, the applicant, Deshutes Aggregate and Recycle, Inc., submitted an application requesting five year review approval of a Special Use Permit for an existing mine located at 11006 Old Highway 99 S.E., Olympia, in unincorporated Thurston County. The mine, previously owned by Lakeside Industries, consists of a 50 acre mining operation located on a 122.62 acre site. The mine is located on a pie shaped parcel that abuts Waldrick Road on the south and the Burlington Northern Santa Fe Railroad on the west. Surrounding uses include farm land, pasture land, and single-family residential dwellings on large, agricultural parcels. The Deshutes River flows from south to north approximately 900 linear feet northeast of the approved mining area.
5. The mine parcel is located in the Long Term Agricultural (LTA) zone classification of the Thurston County Code (TCC) that does not permit the mineral extraction use. However, the mine was initially approved pursuant to a Special Use Permit granted on September 23, 1988 (SUP 14-88) that authorizes mining on 20 acres of the parcel. The zoning at the date of approval was Rural Residential One Dwelling Unit per Two Acres (RR ½) that allowed mineral extraction subject to acquisition of a Special Use Permit. The mine is therefore a legal, non-conforming use.
6. In 1998 the mine received permit approval to expand its extraction area by 30 acres to its present size of 50 acres. The permit imposed conditions of approval to include a requirement that the mine owner apply for five year reviews to assure continued compliance with conditions of approval. Five year review approvals occurred in 1999, 2004, 2008, and 2014. All five year review decisions allowed continuation of the mine subject to compliance with conditions of approval.
7. In Finding 14 of the Decision approving the 2014 Five Year Review, Thurston County Hearing Examiner Sharon Rice found that:

As of the date of the instant hearing, DNR had not yet approved the reclamation plan, but the Applicant indicated that they were “actively working with DNR” to obtain an updated reclamation permit. (Finding 14)

8. In Findings 15 and 16 Examiner Rice found that the mine operator had not obtained approval of its vegetation management plan by the Thurston County Noxious Weed Control Department, and that the mine owner had not timely applied for a five year review subsequent to the 2008 approval. The 2014 review should have occurred in 2013. In the present case, a resident testified that she could find no permit issued for the mine by the Olympic Region Clean Air Agency (ORCCA), and questioned the depth of the mine as it relates to the Deshutes River.
9. The present applicant, Deshutes Aggregate and Recycle, Inc., (Wunch Properties, Inc.) submitted a document entitled "Five-Year Review 2019" (Attachment S to the Staff Report). Said document shows the applicant in compliance with all previous and present conditions of approval. Specifically, the applicant has accomplished the following:
 - A. Received an "Order of Approval" from ORCCA dated March 16, 2018.
 - B. Received a DNR Reclamation Permit dated January 12, 2017. Said permit includes a Hydrogeologic Study Report and Addendum dated January 16, 2009.
 - C. Prepared a site management plan that includes the following:
 1. Erosion and Sediment Control Plan;
 2. Stormwater Monitoring Plan;
 3. Stormwater Pollution Prevention Plan;
 4. Best Management Practices;
 5. Spill Control Plan;
 6. Hazard Communication Program.
 - D. Received approval of a Noxious Weed Management Plan.
 - E. Received a NPEDS Permit issued by State of Washington Department of Ecology (DOE).
10. The applicant has brought the mine into compliance with all conditions imposed by Thurston County, ORCAA, DNR, DOE, and other agencies with jurisdiction. No expert testimony or evidence refutes either the applicant's expert's studies or staff's evaluation of the mine. As held by our Washington State Court of Appeals in Maranatha Mining, Inc., v. Pierce County, 59 Wn. App. 795 (1990):

...The only expert testimony in the record shows that the mitigation measures would prevent groundwater contamination. The fish hatchery operators advise that the project would not affect their operations. The Examiner's findings show that Maranatha's proposals would mitigate the impact of dust particulates. The draft

EIS stated that proposed improvements to roads and a bridge in the area would allow for "safe and comfortable" travel on affected roads. The only opposing evidence was generalized complaints from displeased citizens. Community pleasure cannot be the basis of a permit denial....59 Wn. App. 795 @ 804

11. To continue operating the mine under a Special Use Permit the applicant must show that the request satisfies the criteria set forth in TCC 20.54.040. Findings on each criterion are hereby made as follows:
 - A. At the date it commenced operation in 1988, the mine complied with the Thurston County Comprehensive Plan and the applicable LTA zone classification. The mine is now a legal, nonconforming use and may continue to operate.
 - B. The surface mine complies with the general purposes and intent of the applicable LTA zone classification. The applicant has maintained the required, 100 foot wide setback from all exterior property boundaries, and as previously found, is in compliance with all conditions of previous approvals.
 - C. The existing mine is appropriate in its present location based upon the location of commercial, aggregate material. Over the past years mining has not resulted in substantial, undue, adverse impacts on adjacent parcels, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters that affect the public health, safety, and welfare. The only neighbors of the mine that testified supported continuation of the mine. Finally, the mine will not impose an undue burden on improvements, facilities, utilities, or services currently providing service.

CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the mine is in compliance with all applicable conditions of approval and meets all criteria for special use permit approval. Therefore, the five year review approval should be granted subject to the following conditions:
 - A. Continuing operation of the gravel mine shall comply with the following conditions of the May 5, 2014 Hearing Examiner decision for Special Use Permit, project 2013102726, which include:
 1. Submit a five year review application at least one year prior to the expiration of the current five year review.


2. Continue to work directly with Thurston County Noxious Weed Control Unit for inspections and keep the vegetation management plan updated.
3. All mining activity shall be in compliance with the conditions established through SUP 14-88, SUPT 98-0681, SUP 20016100954, and SUP 2013102726.
4. The operation of the gravel mine shall remain in compliance with the Thurston County Mineral Extraction Ordinance, Chapter 17.20.
5. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of the use will require approval of a new or amended Special Use permit. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
6. Any future increase in activities on this site will be reviewed with respect to all applicable requirements of the Thurston County Code Title 17.20 Mineral Extraction Ordinance.
7. Any future expansion of the mine and/or intensification of mining activities may require a hydrogeologic report and ground water monitoring plan be developed for this site.
8. Any future expansion of the mine and/intensification of the mining activities may require a detailed noise study and noise monitoring plan be developed for this site.
9. Future proposals to add buildings may require an approved public water supply and approved on-site sewage systems.
10. Any future proposals for a shop or for activities that will involve extensive on-site maintenance or repair of vehicles and equipment will require development and approval of a hazardous materials storage, handling, disposal, and spill response plan.
11. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.

12. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

The request for five year review approval for the Deshutes Aggregate and Recycle, Inc., mine located at 11006 Old Highway 99 S.E., Olympia, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 7th day of March, 2019.



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this day of March, 2019, to the following:

APPLICANT: Deshutes Aggregate and Recycle, Inc.
P.O. Box 14451
Tumwater, WA 98501

OTHERS:

Ron Nelson
3624 Waldrick Road S.E.
Olympia, WA 98501

Lee Remer
2103 Harrison
Olympia, WA 98502

Dale Drewry
10220 Old Highway 99 S.E.
Olympia, WA 98501

George Barnes
18041 Daryl Lane
Rochester, WA 98572

THURSTON COUNTY

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$750.00** for a Request for Reconsideration or **\$1,020.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____
Appeal Sequence No.: _____

☐ Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

☐ Check here for: **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
on this _____ day of _____, 20____, as an APPELLANT in the matter of a Hearing Examiner's decision
rendered on _____, 20____, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED _____

SIGNATURE OF APPELLANT _____

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of ☐ \$750.00 for Reconsideration or \$1,020.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.