

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. SUPT-98-0607/SUPT-99-0681
	)	
Jim Mell, Olympia Fuel and Asphalt	)	FINDINGS, CONCLUSIONS
	)	AND DECISION
For a Special Use Permit and a Five-Year	)	
Review	)	
_____	)	

**SUMMARY OF DECISION**

The requests for a Special Use Permit and a five-year review of a previously approved Special Use Permit are **APPROVED**, with conditions.

**SUMMARY OF RECORD**

Request:

Jim Mell of Olympia Fuel and Asphalt (Applicant) requested a Special Use Permit for a expansion of an existing 20-acre gravel mine to allow an additional 30 acres to be mined on property located north of Waldrick Road and east of the Burlington Northern Railroad tracks, Thurston County, Washington, Tax Parcel Number 09770001000. The Applicant also requested a five-year review of the existing mining operation.

Hearing Date:

An open record hearing on the request was held before the Hearing Examiner of Thurston County on November 1, 1999.

Testimony:

At the hearing, the following individuals presented testimony under oath:

Linda Whitcher, Thurston County Development Services  
Mary Kay High, Applicant's Attorney  
Jim Mell, Applicant  
Brad Biggerstaff, Applicant

Exhibits:

At the hearing the following exhibits were admitted:

EXHIBIT 1 Development Services Report

Attachment a Notice of Hearing

Attachment b SUPT-98-0607 Application

Attachment c SUPT-99-0681 Application

Attachment d Topographic Map

Attachment e Drainage Plan

Attachment f Mitigated Determination of NonSignificance

Attachment g September 15, 1999 Letter to Scott Morrison from Development Services

Attachment h October 12, 1999 Letter from OAPCA

Attachment i June 9, 1999 Letter from Washington State Department of Natural Resources

Attachment j August 13, 1999 Memorandum from GeoResources with Attachments

Attachment k June 4, 1999 Letter from Yvonne Farnsworth

Attachment l June 8, 1999 Letter from Yvonne Farnsworth

Attachment m September 10, 1999 Letter from Yvonne Farnsworth

Attachment n SUP-14-88 Hearing Examiner Decision

Attachment o Approved Site Plan for SUP-14-88

EXHIBIT 2 October 28, 1999 Letter from Environment Health Department

EXHIBIT 3 October 27, 1999 Letter from Susan Kempf

EXHIBIT 4 October 30, 1999 E-mail Letter from Mae and Arthur Ostergren

EXHIBIT 5 October 31, 1999 Letter from Mary Kay High with Production Records Attached

EXHIBIT 6 GeoResources Reports with Plans for Proposed and Existing Mining Area Attached

EXHIBIT 7 Soil Survey of Thurston County Washington --Land Capability Classes and Yield per Acre of Crops and Pasture

EXHIBIT 8 Letter from Mary Ann High with Department of Natural Resources Citation

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

**FINDINGS**

1. The subject property is a 171-acre site located north of Waldrick Road and east of the Burlington Northern Railroad tracks, Thurston County, Washington. The Applicant requested a Special Use Permit (SUP) for the required five-year review of a SUP approved in 1988 (SUP-14-88)<sup>1</sup>; and a second SUP(SUPT-98-0607) to extend the allow an extension of the mining on site within an area 30 acres south of the existing 20-acre mining area. The expansion will extend from the existing working face of the mine, to a point near the Waldrick Road. The mining activity will be within the width of the property from Burlington Northern Santa Fe Railroad to the east property line. *Exhibit 1, Staff Report, pages 1 – 2; Whitcher Testimony.*
2. The subject property is zoned Long-Term Agriculture (LTA). *Exhibit 1, Staff Report, page 1.* The existing mine (20 acres) is shown on the 1995 Comprehensive Plan Designated Mineral Resource Lands Map. The remainder of the property is designated as long term resource area for agriculture. *Exhibit 1, Staff Report, pages 2, 4; Whitcher Testimony.*
3. The properties in the area have varied uses. The subject property is a portion of the Lynn Johnson farm which lies on both sides of the Burlington Northern Santa Fe railroad line. There are cattle farms immediately adjacent to the north and east of the subject property. Thurston County operates a mine on the south side of Waldrick Road, directly across from the subject property. The land uses across Old Highway 99 are residential. *Exhibit 1, Staff Report, page 2.*
4. Thurston County was designated lead agency for review of environmental impacts resulting from the proposal. A Mitigated Determination of NonSignificance (MDNS) with six conditions was issued on September 2, 1999, and became final on September 16, 1999. *Exhibit 1, Attachment f.* No appeals of the MDNS were filed.
5. Notice was given in accordance with applicable ordinances. *Exhibit 1, Attachment a.* Public comments were submitted expressing concern about the potential for adverse impacts from the mining facility. *Exhibits 3, 4; Exhibit 1, Attachments k, l, m.*

Findings on the five-year review application:

6. The five-year review, SUPT-99-0681, is required pursuant to a condition of the 1988 SUP. The purpose of the review is to determine if the mine is complying with all

---

<sup>1</sup> The County started a new file for the five year review (SUPT 99-0691)

applicable State and Federal laws and with the conditions of approval imposed by the Thurston Hearing Examiner. *Exhibit 1, page 1.*

7. During the current five-year review, each County and state department with jurisdiction was requested to submit the status of the Applicant's compliance with the applicable regulations and permits. In addition the County representative reviewed the conditions of approval and visited the site. *Exhibit 1, Staff Report, page 7; Exhibit 2; Exhibit 1, Attachments h, i. Whitcher Testimony.* No information was submitted that indicated the operation was significantly out of compliance.
8. Jennifer DeMay of the Olympic Air Pollution Control Authority submitted that the agency had received no complaints about the mine since it has been operated by the Applicant. Further she submitted that the Applicant's off site facility to which the material from the mine is transported is in compliance with all applicable regulations. *Exhibit 1, Attachment h.*
9. As part of the five-year review the Applicant requested that three conditions of the 1988 SUP be modified. The original conditions were:
  - 3C: No gravel, trees, or ground cover shall be removed beyond the limits of the site plan which will assure that a minimum 100-foot buffer area is retained from all property lines.
  - 3E: Hours of operation shall be limited to 7:30 a.m. to 4:00 p.m. daily, except for emergencies which must receive authorized approval from the Planning Department within 48 hours of the emergency.
  - 3F: The Special Use Permit shall be effective for 10 years...

The Applicant requested that the 10-year time limit be removed; that the hours of operation be extended to 7:00 a.m. to 7:00 p.m.; and, that the 100-foot setback requirement be reduced to 50 feet. *Exhibit 1, Attachments c, n; Exhibit 5; High Testimony.* According to the Applicant the buffer will remain because most of it is not in the area projected to be mined. Further the hours of operation are somewhat restrictive in light of the fact that the mining activities do not occur daily on site, but only when there is a need for the material. *Mell Testimony.*
11. Pursuant to *TCC 17.20.115*, a gravel mining facility and accessory uses within or adjacent to a residential zoning district must limit the hours of operation for excavating, processing and loading to 7:00 a.m. – 7:00 p.m. Monday through Saturday. *Exhibit 1, Staff Report, page 6; Whitcher Testimony.* The mine does not operate every day, but only as needed. *Mell Testimony.*

12. The County representative recommended that a 100-foot setback be maintained. If the mining does not occur in the buffer it should remain as a protection against further encroachment. *Exhibit 1, Staff Report, page 8. Whitcher Testimony*

Findings for the mining permit application:

13. Mining operations are unclassified uses in the LTA zoning district. Pursuant to *Thurston County Code (TCC) 20.07.060*, when a use is not listed as A permitted, accessory or special use, the Development Services Director must determine whether the use should be treated as one of the listed uses. *Exhibit 1, Staff Report, page 3.* The County official determined the mining operation to be a special use subject to a special use permit .
14. The existing mining operations will be incrementally relocated. The area being actively mined will not be expanded. There will be a new pit and its depth, a cut of approximately 60 feet, will eventually match the floor of the existing mine. *Exhibit 1, Staff Report, pages 2, 4; Exhibit 5; High Testimony.* As a means of ensuring compatibility with other properties and consistence with the existing mining operations the County representative recommended that the maximum area to be mined be limited to 20 acres at any one time. *Exhibit 1, Staff Report, page 7; Whitcher Testimony*
15. The Applicant requested that the use a portable screen plant in the mining pit be allowed. The screen plant is used to classify and separate the sand from rocks. After the screening the resulting materials will be trucked offsite for further processing at Olympia Fuel and Asphalt plant or for direct sale. *Exhibit 1, page 2; Mell Testimony; High Testimony.* The County representative submitted that the screen plant is consistent with the previous permit and is compatible with adjoining properties. It was recommended for approval as part of the Permit. *Exhibit 1, Staff Report, page 7; Whitcher Testimony.*
16. There are oak tree groves on the subject property and the retention of the oak trees is a requirement of the MDNS. *Exhibit 1, Attachment f.* The Applicant did not appeal the MDNS. *Whitcher Testimony*
17. The County representative submitted that the mine satisfies the intent of the LTA zoning district. It can be used temporarily for mining and then reclaimed for agriculture which is an allowed use in the zone. *Exhibit 1, Staff Report, page 4; Whitcher Testimony.* According to the Applicant, a portion of the mine has been reclaimed, and has been successfully used for agriculture. *Mell Testimony; Exhibit 6; High Testimony.*
18. Stephanie Zurenko of the Washington State Department of Natural Resources (DNR) reviewed the proposed project and the revised reclamation plan (dated November 1998 and revised March 1999). The Department determined it to be complete and acceptable. Upon County approval of the expanded mining site, the DNR would approve a revised

reclamation plan and issue a revised reclamation permit to reflect the expansion. *Exhibit 1, Attachment i.*

- 19 Pursuant to *TCC 20.08A.025*, special uses are only permitted on non-prime farmland soils, unless the applicant demonstrates that the proposed use cannot be accommodated on such soils. The soils on site (soil #74: Nisqually loamy fine sand 3 – 15 percent slope and soil #114: Spanaway-Nisqually complex 2 – 10 percent slopes) are not classified as a prime farmland soil. The mining activity is allowed. *Exhibit 1, Staff Report, page 4; Exhibit 5; High Testimony*
20. The relocation of the mining activity will not increase daily truck traffic to and from the mine. According the County representative, the proposed relocation and use of the portable screen plan will not impose an undue burden to the road system or any utility serving the neighborhood. *Exhibit 1, Staff Report, page 5; Exhibit 6.*
21. The County representative reviewed the proposal for consistency with noise standards, traffic impacts, protection of groundwater and other impacts; and submitted that with the recommended conditions of approval, the expansion will not adversely impact the neighborhood. *Exhibit 1, Staff Report, page 5; Whitcher Testimony.*

## **CONCLUSIONS**

### **Jurisdiction:**

The Hearing Examiner is granted jurisdiction to hear and decide applications for special use permits pursuant to Chapter 36.70 of the Revised Code of Washington and Chapter 20.54 of the Thurston County Code.

### **Criteria for review:**

To be approved, a special use permit must be consist with *TCC 20.54.040 General Standards:*

1. **Plans, Regulations, Laws** 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.
2. **Underlying Zoning District** The proposed use shall comply with the general purpose and intent of the applicable zoning district regulations and sub-area plans. Open space, lot, setback, and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in the chapter.
3. **Location** 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. The 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 reasonable possible, the permit may be granted even though said adverse effects may occur.
- b. Services The use shall be adequately serve by and will not impose an undue burden on any of the improvements, facilities, utilities existing or planned to serve the area.

#### Conclusions Based on Findings:

1. The subject property is a 171-acre site located north of Waldrick Road and east of the Burlington Northern Railroad tracks, Thurston County, Washington. The Applicant requested a Special Use Permit (SUP) for the required five-year review of a SUP approved in 1988 (SUP-14-88)<sup>2</sup>; and a second SUP(SUPT 98-0607) to extend the allow an extension of the mining on site within an area 30 acres south of the existing 20-acre mining area. The expansion will extend from the existing working face of the mine, to a point near the Waldrick Road. The mining activity will be within the width of the property from Burlington Northern Santa Fe Railroad to the east property line. *Finding of Fact No. 1.*
2. A five-year review was completed for the existing mining facility. All of the activities and operations of the Applicant have been determined to be in compliance with all regulations and permits. Modifications of conditions of the original approval can be made to allow continued compliance while improving the mining operation on site. They include: the hours of operation may be increased to allow mining activity from 7:00 a.m. to 7:00 p.m. Monday through Saturday; and, the permit will be valid indefinitely with the provision that the mining operation is reviewed every five years. Setbacks shall be required as specified in the conditions below. *Findings of Fact No. 6 – 12.*
3. The proposed expansion of the existing mining operation will comply with the Thurston County Comprehensive Plan and all applicable Federal, State, Regional, and Thurston County laws or plans. The mining operation will be subject to all applicable regulations governing mining operations. *Findings of Fact No. 2, 13.*
4. The proposed mining operation will comply with the general purpose and intent of the LTA zoning district. The area of the subject property to be mined does not contain soils classified as prime farmland soils. The mined areas will be reclaimed and returned to agricultural use upon completion of mining. A portion of the existing mine has already been returned to agriculture. *Findings of Fact No. 13, 17, 18.*

---

<sup>2</sup> The County started a new file for the five year review (SUPT 99-0691)

5. The proposed relocation of the mining facility will 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. An existing mining facility exists on the site. There will be no net increase in the area that will be actively mined and no increase in truck traffic. *Finding of Fact No. 1, 14, 19, and 20.*
6. The mining operation will not impose an undue burden on any of the improvements, facilities, utilities existing or planned to serve the area. The truck traffic will not increase as a result of the SUP. *Finding of Fact No. 19.*

### **DECISION**

Based upon the preceding Findings and Conclusions, the request for a Special Use Permit and a Five-year review of a previously approved Special Use Permit is **APPROVED**, subject to the following conditions:

1. The pit operator must continue compliance with the conditions established through SUP-14-88, except as modified herein.
2. A portable screen plant is allowed in addition to bucket loaders, trucks, and a crusher.
3. The operation must comply with the provisions of Chapter 17.20, Mineral Extraction Code, Thurston County Code.
4. Operating hours are limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday. The exceptions listed in TCC 17.20 apply.
5. The mine must be worked and reclaimed in phases corresponding to the areas shown on the operation plan. The mine is permitted to work a maximum area of 20 acres at any one time. The balance of the property must be reclaimed or undisturbed.
6. Before expansion is allowed past the original pit permitted through SUP-14-88, the owner/operator must demonstrate that the areas to be mined through SUPT-98-0607 can be successfully reclaimed to a state that is suitable for agricultural use at a productivity level equal to or exceeding today's levels. This may be demonstrated through theoretical analysis endorsed by the Thurston Conservation District or the Natural Resources Conservation Service or through actual crop records from the lands already reclaimed.
7. The **operations** plan must be revised to show compliance with TCC 17.20.230 Setbacks. *No extraction shall be conducted closer than one hundred feet to the boundary of any district in which extraction is permitted or allowed by special use nor closer than one hundred feet from the property boundary at the time of application.* The **reclamation**



plan may continue to show a 50 foot buffer outside the Oregon White Oak sensitive areas.

8. The mine operator must comply with the conditions listed in the Revised Mitigated Determination of NonSignificance, dated September 2, 1999.
9. It is the responsibility of the owner/operator to request a review every five years. Failure to submit the application may be justification for the County to begin compliance action against the project.
10. This permit will be valid indefinitely. However there is to be an administrative review conducted every five-years by the County to determine if the operation and facility are consistent with all permits and conditions and all applicable laws of the State of Washington and Thurston County. Should the County determine that there are inconsistencies with the permits, conditions or laws and regulations there shall be a public hearing on the continued validity of the permit.

Decided this 22nd day of November, 1999.

---

James M. Driscoll  
Hearing Examiner for Thurston County

*Property owners affected by this decision may request a change in valuation for property tax purposes from the Thurston County Assessor. TCC 20.60.020(3)(j)*

J:\DEV\_SVCS\ZONING.LU\DECISION\SUP\980607.doc