

**OFFICE OF THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Appeal of)	
)	No. AAPL-98-1060
ALPINE SAND AND GRAVEL)	
)	FINDINGS, CONCLUSIONS
For Approval of an)	AND DECISION
Administrative Appeal)	
_____)	

SUMMARY OF DECISION

The Administrative Appeal of a Thurston County Department of Development Service's decision that the Appellant does not have a current shoreline permit for a sand and gravel mining operation is denied. The Appellants shall secure such a permit for the operation.

SUMMARY OF RECORD

Request:

On July 14, 1997, Alpine Sand and Gravel (Appellant) filed an application for a Special Use Permit and State Environmental Policy Act checklist for expansion of a sand and gravel operation at 7141 Rixie Road SE, Thurston County, Tax Parcel Number 11706310101. Because of the location of the site near the Deschutes River and the fact that the expansion exceeded the statutory monetary threshold (\$2,500.00) on July 2, 1998, the County determined that a Shoreline Management Act review of the proposal was required. The Appellant appealed the County's determination of Shoreline review.

Hearing Date:

A hearing on the appeal was held before the Hearing Examiner on April 5, 1999

Witnesses:

Maryrose Livingston
Gordon Boe
Myron Struck
Emerson Hoel

Exhibits:

At the hearing of this appeal, the following exhibits were admitted:

Exhibit:

Exhibit 1 Development Services Department Report

Attachment a Notice of Public Hearing

Attachment b Surface Mining Operating Permit No. 11016

Attachment c Pollution Control Hearings Board Stipulations and Final Order No. PCHB 95-117

Attachment d Permit For Shoreline Management Substantial Development No. SH-TCO-13-74

Attachment e Deputy Prosecuting Attorney's legal opinion dated September 10, 1998

Attachment f Chapter 173-14-060(2) WAC, Permits for Substantial Development

Attachment g Shoreline Management Guidebook, Volume I: Shoreline Administrator's Manual, page M-82

Attachment h March 19, 1999 Issues of Appeal from Alpine Sand & Gravel

Exhibit 2 Five Letters from Development Services requesting Information from the Applicant

Upon consideration of the testimony and exhibits submitted at the above referenced hearings and documents filed on appeal, the following Findings and Conclusions are entered by Hearing Examiner:

FINDINGS

1. The Appellant has operated a sand and gravel operation at 7141 Rixie Road SE in unincorporated Thurston County since 1973. A portion of the site is within a shoreline jurisdictional area of the Deschutes River. On June 24, 1974, the Appellant was issued a Shoreline Management Substantial Development Permit (SH-TCO-13-74) for construction of a revetment along the River and the operation of a sand and gravel operation. Although no expiration date was set forth in the permit, it was issued pursuant to the Shoreline Management Act of 1971 (RCW Chapter 90.58). *Exhibit 1, Staff Report; Exhibit 1, Attachment d; Livingston Testimony*. In addition to permit SH-TCO-13-74 the Appellant secured other permits from the County for the operation on site.
2. The Appellant submitted an application for the expansion of the existing mining operation. In 1997 the Appellant's application for Special Use Permit (SUP-96-016) and the accompanying environmental review was deemed complete for project review. However, during project review Thurston County determined that the scope of the expansion activity occurs in the shoreline jurisdictional area and a Shoreline Permit is required. *Exhibit 1, Staff Report*. The County also determined that the permit SH-TCO-13-74 issued in 1974 had lapsed and that a new Shoreline Permit review process was necessary for the proposed activity on site. *Livingston Testimony; Exhibit 1, Attachment*

h (letter to Appellant from Thurston County Development Services dated July 2, 1998).

3. The County based its determination of the lapsed shoreline permit on WAC-173-14-060 which states:

If a project for which a permit has been granted pursuant to the act has not been completed within five years after the approval of the permit by local government, the local government that granted the permit shall, at the expiration of the five-year period, review the permit, and upon a showing of good cause, do either of the following: extend the permit for one year; or terminate the permit; provided that nothing herein shall preclude local government from issuing substantial development permits with a fixed termination date of less than five (5) years.

Because no extension was requested nor granted, the Department determined that SH-TCO-13-74 expired on June 24, 1979, which was five years after the permit was issued. This regulation was in effect at the time that SH-TCO-13.74 was issued. *Livingston Testimony; Exhibit 1, Staff Report; Exhibit 1, Attachment h (letter to Appellant from Thurston County Development Services dated July 2, 1998).*

4. The Department of Ecology's current regulations also provide that authorization for "development activity" terminates after five years. WAC-173-27-090(3) states:

Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.

Exhibit 1, Staff Report; Exhibit 1, Attachment e.

5. Pursuant the Shoreline Management Act, RCW 90.58.030, development is "a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or mineral; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter" *Exhibit 1, page 2.*

6. The Appellant contended that SH-TCO-13-74 never expired because there was no expiration date on the permit. The Appellant submitted that the provisions of WAC 173-14-060 authorized a five year period (plus one year extension) to construct the revetment which was done. According to the Appellant the revetment became a permanent structure on site as did the sand and gravel operation. *Boe Testimony; Exhibit 1, Attachment h (letter from Appellant to Maryrose Livingston dated July 20, 1998).*

7. Although the removal of gravel will not occur in the shoreline jurisdictional area, gravel will be dumped in at a crusher dump which is within the jurisdictional area. The Appellant will be transferring gravel and sand on a road that is within the jurisdictional

area. *Exhibit 1, Attachment h (letter to Appellant from Thurston County Development Services dated July 2, 1998).*

8. On March 26, 1996 the Washington State Pollution Control Board issued a final Order relating to the expansion activity on site. Included in the order was section 1.8(e) which stated:

No later than May 31, 1996, Alpine will make a proper application, which shall include all necessary supporting information, to Thurston County for a Conditional Land Use Permit and *Shoreline Substantial Development Permit* that covers the full 145 acres now being mined by Alpine, unless the County deems such permits unnecessary. *Exhibit 1, Attachment c (Pollution Board Order).*

No appeal of this Order was filed by the Appellant. *Hoel Testimony; Boe Testimony.* The County has deemed the Shoreline Permit necessary. *Livingston Testimony.*

9. The sand and gravel operation and the expansion are located in a significant shoreline of the State of Washington, the Deschutes River and the cost of such project exceeds \$2,500.00. *Livingston Testimony.*
10. Permit SH-TCO-13-74 issued in 1974 included a condition as follows:

Each year after approval of this permit the applicant *shall* submit to the Planning staff a site plan showing areas which have been mined completely and the proposed reclamation of that portion of the property. Reclamation shall occur at least once a year. All vegetation to be planted must be of a fast growing variety. (emphasis added)

The Appellant (the Applicant in permit SH-TCO-13-74) never submitted yearly site plans and thereby violated the conditions of the permit. *Livingston Testimony.*

CONCLUSIONS

Jurisdiction:

Pursuant to Chapter 35A.63 of the Revised Code of Washington, Thurston County Municipal Code 2.06.010(c), and Thurston County Municipal Code 19.12.010(b), the Hearing Examiner has jurisdiction to hear and decide the appeal of this administrative decision.

Conclusions of Law:

1. Pursuant to a July 2, 1998 administrative Order the County has required the Appellant to submit the expansion of a sand and gravel operation at 7147 Rixie Road SE in unincorporated Thurston County to a review pursuant to the Shoreline Management Act of 1971, Chapter 90.58 RCW. Included with the process will be the determination of whether a Shoreline Substantial Development Permit is issued for the expansion and whether any other shoreline permits are required.

2. Although the first shoreline permit issued June 24, 1974 did not have a expiration date specifically listed on the permit it was subject to the provisions of Chapter 90.58 RCW and the administrative code provisions of WAC 173-27-090(3). Thurston County Code (TCC) 19.01.010 establish that the shoreline substantial development permits are subject to the process as created in RCW 90.58 and WAC Chapter 173.¹
3. Permit SH-TCO-13-74 terminated on June 24, 1979, five years after the issuance of the permit. No extensions were requested. The permit terminated pursuant to the provisions of WAC 173-14-060. The current administrative regulations provided a similar result of termination of the permit. *WAC 173-27-090 (3)*
4. A Shoreline Permit review is required pursuant to the requirements as set forth in the final Order of March 26, 1996 of the Washington State Pollution Control Board. No appeal of this Order was filed and it is final and binding on the Appellant. The Order requires the Appellant to “make a proper application, with all supporting information, to Thurston County for a Conditional Land Use Permit and a Shoreline Substantial Development Permit that covers the full 145 acres now being mined by Alpine.” The County has deemed these permits necessary.
5. The proposed activity is within a significant shoreline, the Deschutes River. (*WAC 173-18-380*) The mining activity qualifies as a “development” that is regulated by the Shoreline Act. RCW 90.58.030 (3)(d). The Appellant must submit any development activity on site to a Shoreline Act review.
6. The Appellant’s appeal fails. A Shoreline Review is required.

DECIDED this 22nd day of April, 1999.

James M. Driscoll
Hearing Examiner for Thurston County

¹ Also refer to WAC 173-19-420