

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

In the Matter of the Appeal of	)	
	)	No. AAPL-98-1060
ALPINE SAND AND GRAVEL	)	
	)	ORDER ON
For Approval of an	)	RECONSIDERATION REQUEST
Administrative Appeal	)	
_____	)	

**SUMMARY OF PROCEEDINGS**

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. 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), the County determined that a Shoreline Management Act review of the proposal was required. The Appellant appealed the County's shoreline review requirement determination contending that it had a current shoreline permit. A hearing on the appeal was held before the Hearing Examiner on April 5, 1999. On April 22, 1999, the Hearing Examiner denied the Administrative Appeal of the County's decision that the Appellant does not have a current Shoreline Permit and determined that the Appellant must secure a permit for the operation. On May 3, 1999, the Appellant requested reconsideration of the Hearing Examiner's decision.

**DISCUSSION ON THE RECONSIDERATION REQUEST**

In the Request for Reconsideration, the Appellant disagreed with the County's position that a shoreline permit is required for the sand and gravel operation. The Appellant raised numerous points in support of its position including: the sand and gravel operation was developed with a previously issued shoreline permit and the current operation should be allowed to continue to operate under that permit; the operation does not interfere with normal use of the shoreline; and, the operation is exempt from substantial development permit requirements.<sup>1</sup> *Request for Reconsideration.*

The Hearing Examiner addressed all of these issues in the April 22, 1999 decision. Reference is made to the following Findings and Conclusions issued with the April 22, 1999 decision:

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

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<sup>1</sup> The Appellant also requested the County to explain "what Alpine has spent \$2,500.00 on within 200 feet of the shoreline of the Deschutes River." The burden of proof is on the Appellant to demonstrate its exemption from Shoreline Substantial Development Permit requirements. The Appellant presented no such evidence.

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).*

In the April 22, 1999 Decision, the Hearing Examiner issued conclusions on these issues:

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.
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 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.

Pursuant the *Rules of Procedure for Proceedings before the Hearing Examiner of Thurston County, Washington* Section 9.4(c) a request for reconsideration must “explicitly set forth alleged errors of procedure or fact. The request may also include direction to a specific issue

that was inadvertently omitted from the Hearing Examiner's recommendation or decision." No error of procedure or fact was identified. No contentions listed in the Request for Reconsideration were raised by the Appellant identified issues inadvertently omitted from the April 22, 1999 decision. The Reconsideration restated issues already brought before and considered by the Hearing Examiner.

On one issue raised in the Request for Reconsideration, the Appellant submitted that it may qualify for an exemption from Substantial Shoreline Permit Requirements, and thereby qualify for a variance pursuant to WAC 173-14-130. The exemption referenced in the reconsideration request is for agriculture use and does not appear applicable to the proposed use. No variance request has been made.

### **ORDER**

The request for reconsideration is DENIED.

DECIDED this 23<sup>rd</sup> day of June, 1999.

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James M. Driscoll  
Hearing Examiner for Thurston County