



Cathy Wolfe  
District One  
Diane Oberquell  
District Two  
Robert N. Macleod  
District Three

## HEARING EXAMINER

### BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Application of	)	No. 2006100954
	)	
<b>Lakeside Industries</b>	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION
For a Five-Year Review of	)	
<u>SUP 14-88/SUP 98-0607.</u>	)	

### SUMMARY OF DECISION

The five-year review of Special Use Permits (SUP) 14-88 and 98-0607 is **GRANTED**, with conditions.

### SUMMARY OF RECORD

#### **Request:**

Lakeside Industries (Applicant) requested five-year review of SUP 14-88 and SUP 98-0607, which together authorize a 50-acre gravel mine at 11006 SE Old Highway 99 (Tax Parcel No. 09770001000).

#### **Hearing Date:**

An open record hearing on the request was held before the Hearing Examiner of Thurston County on September 4, 2007. On September 11, 2007, the Hearing Examiner issued an order requiring the Applicant to submit a hydrogeological report. The Applicant submitted the hydrogeological report on December 12, 2007, and a revised reclamation plan on December 21, 2007.<sup>1</sup>

#### **Testimony:**

At the open record hearing the following individuals presented testimony under oath:

---

<sup>1</sup> Although the revised reclamation plan was not specifically requested in the order, it is an essential element of the five-year review and would have been required as a condition of five-year review approval. The reclamation plan is admitted into the record, as well as the related correspondence. Further, all of the documents are admitted even though they were submitted after the December 11, 2007 deadline stated in the November 30, 2007 Second Order Granting Extension of Time. The County did not object to submission of the documents, and was provided an ample opportunity to comment on them.

Tony Kantas, Associate Planner, Development Services Department  
Arthur Saint, P.E., Roads and Transportation Department  
Sara Brallier, Environmental Health Department  
James Hatch  
Forest Lane

**Exhibits:**

At the open record hearing the following exhibits were admitted into the record:

**EXHIBIT 1    Development Services Department Staff Report**

- |              |  |
|--------------|--|
| Attachment a | Notice of Public Hearing   |
| Attachment b | Site Plan  |
| Attachment c | Aerial Photo   |
| Attachment d | SUPT 98-0607/SUPT 99-0681 Hearing Examiner "Findings, Conclusions, and Decision," dated November 22, 1999. |
| Attachment e | SEPA No. 98-0607 issued on September 2, 1999.  |
| Attachment f | SUP-14-88 Hearing Examiner "Findings, Conclusions, and Decision," dated September 23, 1988.                |
| Attachment g | July 3, 2006 comment letter from Mathew Brookshier, Washington State Department of Natural Resources.      |
| Attachment h | November 22, 2004            letter from Forest Lane, Applicant Representative.                            |
| Attachment i | June 26, 2006 Comment Letter from the Thurston County Noxious Weed Department.                             |
| Attachment j | August 8, 2007 Comment letter from the Health Department   |

**EXHIBIT 2    September 12, 2007 Hearing Examiner Post Hearing Order**

**EXHIBIT 3    October 8, 2007 Request for Extension for Hydrogeologic Report, Jeffrey Kaspar, Clifford T. Schmitt, Farallon Consulting, L.L.C.**

**EXHIBIT 4    October 17, 2007 Hearing Examiner Order Granting Extension of Time**

- EXHIBIT 5 November 27, 2007 Email Request for Additional Extension of Time, Jeff Kaspar, Farallon Consulting, L.L.C.
- EXHIBIT 6 December 4, 2007 Hearing Examiner Second Order Granting Extension of Time
- EXHIBIT 7 Hydrogeologic Study Report, December 12, 2007
- EXHIBIT 8 December 20, 2007 letter from Forest Lane re: Project No. 20066100954 Periodic Review, with reclamation plan submittals (includes cover letter to DNR dated December 20, 2007, Form SM-6, Form SM-8, Reclamation Narrative, Maps, TCC 17.20.230, Hydrogeologic Study Report, and MDNS)."

Upon consideration of the testimony and exhibits admitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

#### **FINDINGS**

1. The Applicant requested five-year review of SUP 14-88 and SUP 98-0607, which together authorize a 50-acre gravel mine at 11006 SE Old Highway 99 (Tax Parcel No. 09770001000).
2. The subject property is zoned Long Term Agricultural (LTA). Pursuant to Thurston County Code (TCC) 20.07.060(1), County staff has determined that the mining activities are an authorized special use in the LTA zone. *Exhibit 1, Staff Report, page 2.*
3. Mining activities were first permitted on the site in 1988, through SUP 14-88. This permit authorized the development a 20-acre gravel mine, subject to a ten-year limitation on operations, and a five-year review "to determine whether the conditions of the approval have been complied with or should be amended." *Exhibit 1, Attachment f.*
4. In 1999, the Hearing Examiner approved a special use permit (SUP 98-0607) to expand the 20-acre mine to 50 acres, and in the same decision granted five-year review of SUP 14-88. The Hearing Examiner eliminated the ten-year limitation on operations, but required "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." *Exhibit 1, Attachment d, page 9.* The condition provided that if the County found any inconsistencies with the permits, conditions, or laws, there would be a public hearing on the continued validity of the permit. *Exhibit 1, Attachment d, page 9.*

5. The Applicant requested five-year review of the gravel mining operation on November 22, 2004. The request included a checklist of the project's compliance with the conditions of SUP 14-88 and SUP 98-0607. *Exhibit 1, Attachment h.*
6. During its review, County staff determined that the gravel mining operation was inconsistent with some of the conditions of SUP 98-0607 because the Applicant had not yet submitted a revised reclamation plan for the 30-acre expansion area to the Department of Natural Resources (DNR), and because there was evidence suggesting that the mining activities had breached the water table (see Exhibit 1, Attachment g). The relevant conditions are as follows:

3. The operation must comply with the provisions of Chapter 17.20, Mineral Extraction Code, Thurston County Code.

*Relevant Mineral Extraction Code Provision*

17.20.140 (Rehabilitation and conservation requirements)<sup>2</sup>

8. The mine operator must comply with the conditions listed in the Revised Mitigated Determination of NonSignificance, dated September 2, 1999.

*Relevant MDNS Conditions*

3. This proposal is for the horizontal expansion of the existing mine to the south. There shall be no mining into the groundwater or expansion to the north toward the Deschutes River.

6. The proposal shall comply with all requirements of the approved Department of Natural Resources Reclamation Plan.

*Exhibit 1, Staff Report, pages 3-4; Exhibit 1, Attachments d and e.*

7. With SUP 98-0607, the Applicant proposed to mine to a depth of approximately 60 feet. In correspondence dated July 3, 2006 (Exhibit 1, Attachment g), a representative from the DNR commented, "I visited the site in early April and it appears that the current mining elevation may have breached water table. Therefore, I suggest that Thurston County consider whether the mining depth of 60-feet is still feasible at this site. Because the County approved subsequent use of

---

<sup>2</sup> The Hearing Examiner notes that this provision, which was cited by staff, does not explicitly require preparation of a reclamation plan. Instead, it requires a *rehabilitation plan* for those projects that are not subject to DNR's reclamation plan requirements. This project is subject to DNR's reclamation plan requirements, which are set forth in Revised Code of Washington (RCW) 78.44 and Washington Administrative Code (WAC) 332-18. *See Exhibit 1, Attachment g; Exhibit 1, Attachment d, Finding No. 18.*

the property is agriculture, the mining depth should remain above the seasonal high water table.” *Exhibit 1, Attachment g.*

8. A licensed geologist conducted a hydrogeologic study of the site to determine whether existing mining operations have breached the seasonal high groundwater table, and if so, to provide a recommendation on the target mining depth to ensure that additional breaches of the seasonal high groundwater table do not occur. The study included preparation of a topographic survey of the site, installation of three groundwater wells, survey of the groundwater well locations, measurement of groundwater elevations, and comparison of the groundwater elevation with the lowest ground elevation at the base of the mine. *Exhibit 7, page 1-1.*
9. The conclusion of the hydrogeologic study was that the ground surface of the already excavated portion of the mine (north end of site) is at least eight feet above the groundwater elevation, and that groundwater does not discharge to the surface. *Exhibit 7; Exhibit 8, Reclamation Narrative.*
10. Although the hydrogeologic study concluded that there had been no breach of the water table, the data collected as part of the study indicated that the maximum excavation depth would need to be modified to remain above the water table. In the un-mined portions of the site (south side), the groundwater is approximately 35 to 50 feet below the surface.<sup>3</sup> The Applicant has prepared and submitted to the DNR a revised reclamation plan that indicates a mining depth ranging from approximately 25 feet to a maximum of 40 feet so as to ensure that mining activities remain ten feet above the water table. In addition, the revised reclamation plan demonstrates compliance with the other requirements of SUP 98-0607, including a 100-foot setback from property lines and a 50-foot setback from stands of Oregon white oak. *Exhibit 8 (see in particular, Reclamation Narrative and Figure 4).*
11. The Thurston County Environmental Health Department reviewed the five-year review application and recommended approval, subject to conditions. The recommended conditions do not require any modification of existing operations, but indicate that additional approvals might be required if mining operations are expanded or intensified. *Exhibit 1, Attachment j.*
12. The Thurston County Noxious Weed Control Department requested that the Applicant be required to prepare a vegetation management plan to prevent the spread of noxious weeds. The Noxious Weed Control Department submitted that barren or disturbed soils (such as in a gravel mine) are most susceptible to noxious weed infestations, and that the hauling of the gravel off site can lead to

---

<sup>3</sup> At the two monitoring well locations that correspond to the un-mined portion of the site, the depth to groundwater ranged from approximately 41 to 52 feet. *Exhibit 7, Table 1.*

infestations in new areas. Over the past decade, the Noxious Weed Control Department has had to take enforcement action against several mining operations in Thurston County due to noxious weed violations. *Exhibit 1, Attachment i.* Staff's recommended conditions of five-year review include a requirement that the Applicant develop a vegetation management plan. *Exhibit 1, Staff Report, page 5.*

13. The requested five-year review is exempt from review under the State Environmental Policy Act (SEPA). The County reviewed the environmental impacts of the mine in conjunction with the original permit (SUP 14-88) and with the 30-acre expansion (SUP 98-0607), and issued a Mitigated Determination of Nonsignificance (MDNS) for each. *Exhibit 1, Staff Report, page 3.* Condition No. 6 of the Reissued MDNS for SUP 98-0607 required the proposal to comply with all requirements of the "approved Department of Natural Resources Reclamation Plan." *Exhibit 1, Staff Report, page 3; Exhibit 1, Attachments k and l.* As of the September 4, 2007 hearing the Applicant had not yet obtained DNR approval of a reclamation plan for the 30-acre expansion authorized by SUP 98-0607. However, on December 20, 2007 the Applicant submitted to the DNR a reclamation plan that addresses both the 50-acre mine area and the proposed reduction in mining depth to 40 feet. *Exhibit 8.*
14. Notice of the open record hearing was mailed to property owners within 2,600 feet of the mine on August 21, 2007, published in *The Olympian* and *The Nisqually Valley News* on August 24, 2007, and posted on site on August 24, 2007. *Exhibit 1, Staff Report, page 3; Exhibit 1, Attachment a.* There was no public comment on the application.

## CONCLUSIONS

### Jurisdiction/Criteria for Review:

The Hearing Examiner has jurisdiction to conduct the five-year review pursuant to Sections 2.06.010 and 20.54.070(21)(e) of the Thurston County Code. Pursuant to TCC 20.54.070(21)(e), a special use permit for a mine "shall be reviewed by the approval authority no less frequently than every five years from the date of the decision to approve the permit.... At the time of such review, the approval authority may impose additional conditions upon the operation if the approval authority determines it is necessary to do so to meet the standards of this chapter, as amended." One of the standards of TCC 20.54.040 is that a special use may not "result in substantial or undue adverse effects on adjacent property ... or other matters affecting the public health, safety and welfare." *TCC 20.54.040(C)(1).*

#### Conclusions Based on Findings:

1. With conditions of approval limiting the maximum mining depth to 40 feet as proposed in the revised reclamation plan, the gravel mine satisfies the conditions of SUP 14-88 and SUP 98-0607, and is consistent with the applicable state and Thurston County laws. *Findings Nos. 1-11 and 13.*
2. A condition addressing noxious weed control must be added to the permit to ensure that the use does not result in adverse effects on adjacent property. With this condition the gravel mine would satisfy the standards of the special use chapter of the Thurston County Code. *Finding No. 12.*

#### **DECISION**

Based upon the preceding Findings and Conclusions, the request for five-year review of SUP 14-88 and SUP 98-0607 is **GRANTED**, subject to the following conditions:

1. All mining activity must remain in compliance with the conditions established through SUP 14-88, SUPT 98-0607/SUPT 99-0681, and SEPA 98-0607.
2. Mining activities shall remain above the water table. The maximum mining depth shall be 40 feet below the ground surface.
3. The Applicant shall consult with the Thurston County Noxious Weed Control Department to establish a vegetation management plan to control noxious weeds on the mine site. The vegetation management plan shall be submitted to the Noxious Weed Control Department within 90 days of Hearing Examiner approval of the five-year review.
4. 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 Development Services Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
5. The Special Use Permit shall be reviewed by the Hearing Examiner each five years after the effective date of the permit to determine whether the conditions of approval have been complied with or should be amended. The Applicant is responsible to initiate the five-year review process. The next five year review shall occur no later than January 2013.

#### *Health Department Conditions<sup>4</sup>*

---

<sup>4</sup> These conditions have been modified from the Health Department's August 8, 2007 comment letter (Exhibit 1, Attachment j).

6. Mining activities shall remain in compliance with the noise standards of WAC 173-60.
7. Any future proposals to add buildings might require an approved public water supply and approved on-site sewage disposal systems.
8. 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.

Decided this 9<sup>th</sup> day of January 2008.

---

LeAnna C. Toweill  
Hearing Examiner Pro Tem for  
Thurston County