

BEFORE THE BOARD OF COUNTY COMMISSIONERS
THURSTON COUNTY, WASHINGTON

In Re the Matter of,

Quality Rock

NO. SUPT 000788

DECISION

THIS MATTER came before the Board of County Commissioners on August 4, 2003 for the second time pursuant to an appeal by the Black Hills Audubon Society (Audubon Society). Last summer the Board vacated the hearing examiner's decision dated April 5, 2002 approving a special use permit (SUP) to expand the existing 26 acre mine to a 151 acres, add an asphalt plant and resume concrete productions.. The Board remanded the matter back to the hearing examiner to take further evidence on: (1) whether the uses approved in the 1985 and 1986 permits (mining on 26 acres and concrete production) had been abandoned (2) the proposed gravel mining expansions' impact to the groundwater, aquifer and the Black River; (3); what portion of the 151 acre site was designated as a mineral resource land of long-term commercial significance; and (4) traffic safety issues;

On May 30, 2003, the hearing examiner issued a second decision approving the SUP. In this decision, the hearing examiner determined (1) the 1985 and 1986 permits had not been abandoned ; (2) the water quality impacts to the groundwater, aquifer and the Black River had been adequately addressed; (3) 26 acres of the 151 acre parcel had been designated as a mineral resource land of long-term significance; and (4) due to safety issues all new truck traffic was prohibited on 88th avenue. The hearing examiner approved the special use permit with a number of conditions. On June 13, 2003, the Audubon Society timely filed a second appeal

The Board reviewed the hearing examiner's decision, the evidence presented to the hearing examiner, and listened to the audiotapes of the hearing.

Based on the above record, the Board determined that the (1) the 1985 and 1986 permits were still valid and had not been abandoned; and (2) the proposed location for the gravel mine is *not* appropriate due to the gravel mining operations' significant adverse impacts on the surrounding sensitive environment; (3) the proposed gravel mine is not consistent with the comprehensive plan policies on the natural environment ; and (3) if the SUP is approved on appeal in superior court all truck traffic on 88th avenue should be prohibited due to safety issues.

Specifically the Board determined as follows:

I. 1985 and 1986 Permits

The 1985 and 1986 permits are valid because the operative term is abandon. This term as all parties agree has an element of intent, and it is clear from the record, the original owner did not intend to abandon the site as a mineral extraction site.

II. Water Quality Impacts to the Black River and surrounding Area

The hearing examiner made the following factual determinations and legal conclusions:

- ❑ The subject property is a gently rolling glacial upland that is on the east side of the Black River Valley. The Black River is considered to be one of the last large, intact riparian systems in the Puget Sound area and the U.S. Fish & Wildlife Service is actively acquiring properties along portions of the Black River to preserve the existing wetland system and the habitat for migratory birds and fish and other species. The authorized boundary of the Black River Refuge surrounds the subject property. HE Decision No. 1 FF No. 6
- ❑ Groundwater beneath the site flows from east to west away from Ashley Creek and neighboring wells but toward the Black River. HE Decision No. 1 FF No. 44
- ❑ The Black River is water quality impaired under the Clean Water Act. Concern was raised that the proposal would further reduce water flows and thus exacerbate the water quality problems particularly during the dryer summer months when production would be at its peak. HE Decision No. 1 FF No. 45
- ❑ The Ground Water section of the County health Department has determined that the existing operations and proposed expansion does pose a significant risk to ground and surface water resources. The proposed mitigation is to install monitoring wells HE Decision No. 1 FF No. 54
- ❑ At the mine site the Qva has formed an aquifer with moderate to high permeability. The proposed mining activity below the water table would result in the creation of a 75-acre lake. HE Decision No. 2:FF No. 2
- ❑ The county hydrologist anticipates based on computer modeling that the drawdown of the aquifer caused by mining activity would not exceed one inch. HE Decision No. 1 FF No. 49
- ❑ Changes to the site from the till stripping and creation of the lake were modeled. HE Decision No. 2:FF No. 13.
- ❑ The model reflects that the average annual evaporation from the pit lake would exceed the historic evapotranspiration rate by 3.7 inches per year. HE Decision No. 2:FF No. 15.
- ❑ The estimated change in groundwater levels at neighboring wells ranged from a drop of .8 feet to a drop of 1.7 feet. However the magnitude of water level changes may be as much as twice as that shown due to the modeling assumptions. HE Decision No. 2:FF No. 17.
- ❑ Ms. Romero, a hydrology expert considered the drawdown to be significant. HE Decision No. 2:FF No. 18
- ❑ The impact to groundwater during the final three proposed phases of the operation is unclear. HE Decision No. 1 Conclusion 5(g)(ii).
- ❑ Condition Y of the hearing examiner's first decision and condition V. of the hearing examiner's second decision states that "The last three phases of the operation shall be subject to further review including detailed analysis of the impact of groundwater to the site,

the aquifer and the Black River

These facts clearly establish that there is a hydraulic link between the groundwater on site and to the water quality impaired Black River. Further these facts show the proposal does pose a significant risk to groundwater. Finally the hearing examiner did not make any findings on impacts to the Black River, despite the Board's earlier remand decision to study the impacts to the Black River.

It is clear from the hearing examiner's own findings that predictions on impacts to groundwater are only predictions and the actual effects on site will be and can be quite differently. For example, Bob Mead in his initial assessment predicted a drawdown of 1 inch to the aquifer and nearby wells. Another expert, Nadine Romero predicted that that the drawdown would be closer to two feet. After further studies on site by the applicant it was established that the drawdown would be about 1 and a half feet. Further, the applicant's own consultant acknowledged in his supplemental report, exhibit 66, that "the pattern of drawdown. . . indicated by the modeling results is not sensitive to on site conditions and the magnitude of water level changes may be as much as twice that shown . . . as a result of in e increase in hydraulic gradient across the mine, as compared to the average gradient used for modeling.

The proposed mitigation to install monitoring wells and study in five years does not sufficiently mitigate the undisputed impacts of the proposed project due to the sensitivity of the Black River and surrounding area.

As a result of the hearing examiner's own findings, and lack of findings regarding impacts to the Black River, the hearing examiner's ultimate conclusion that the proposed location of the project is appropriate and that the project will not have an adverse impact on the surrounding environment, including the Black River, and community is not supported by the evidence in the record.

Furthermore the proposed project is not consistent with the following comprehensive plan policies on the natural environment.

Protecting wildlife habitat for important species and protecting unique and rare habitats (Goal 1, Objective B, Policy 4); recognizing the hydrologic continuity between ground and surface water (Goal 2, Objective A, Policy 3); protecting groundwater aquifers, fish and wildlife habitat, and recreational functions of streams (Goal 2, Objective B, Policy 1); protecting streams from adverse impacts of activities occurring adjacent to their waters or within their watersheds by avoiding degradation of water quality (Goal 2, Objective C, Policy 1).

III. TRAFFIC SAFETY ISSUES

The hearing examiner took additional evidence on whether 88th Avenue, could comply with the certain county and state road standards and made the following finding:

88th Avenue SW has a pavement width of 20 feet and no shoulders. In order to comply with County standards for local access roads, the road would have to be widened two feet for shoulders. Ten-foot wide clear zones (unobstructed right-of-way or easement) would have to be established. Currently only portions of the road have clear zones. In addition, the intersection of 88th Avenue SW and Littlerock Road does not have sufficient turning radius to satisfy AASHTO standards for truck

Quality Rock Decision Two SUPT 0007888
Page 4

traffic (Chapter 9). Trucks turning south onto Littlerock Road occupy the entire road during the turn. HE Decision No. 2:FF No.26.

Despite this finding the hearing examiner allowed the applicant to use 88th Avenue for up to 70 truck trips per day. Hearing Examiner's Decision on Remand, condition F. It is undisputed the applicant cannot meet the applicable road standards for the 88th Avenue access. Furthermore, use of 88th Avenue for truck traffic presents undisputed safety issues that cannot be mitigated by the applicant. One of the more significant safety issues is that trucks turning south onto Littlerock Road (the majority of the trucks will be heading south) will occupy the entire road during the turn.

If the SUP is approved on appeal Condition F should be modified to prohibit all truck traffic on 88th Avenue.

IT IS HEREBY ORDERED AS FOLLOWS:

The Hearing Examiner's Decision on Remand dated May 30, 2003 is reversed and the SUP 000788 is denied.

DATED this ____ day of _____, 2003.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
Thurston County, Washington

Clerk of the Board

Chairman

Commissioner

Commissioner