

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	No. SUPT 970240
)	
Liberty 1 Resources, LLC)	FINDINGS, CONCLUSIONS
)	AND DECISION
For Approval of a Special Use Permit)	
_____)	

SUMMARY OF DECISION

A request for a Special Use Permit to operate a recycling facility for concrete and asphalt is **GRANTED**, subject to conditions.

SUMMARY OF RECORD

Request

Liberty 1 Resources (Applicant) requested a Special Use Permit (SUP) to operate a recycling facility for concrete, asphalt, and roofing materials and for top soil mixing on a 2.5 acre portion of a five (5) acre site south of 93rd Avenue Southwest and east of Kimmie Street Southwest, Thurston County. The proposed facility would involve the hauling of concrete and asphalt from demolition sites and road projects, crushing the materials, and stockpiling the product on-site.¹

Hearing Date

An open record public hearing on the request was held before the Hearing Examiner of Thurston County on September 5, 2000.

Testimony

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

Nancy Pritchett, Development Services
Bernedette Clemente, Roads and Transportation Services
Don Dodge, Applicant Representative
Bill Dean, Environmental Health

¹ This decision does not include discussion or resolution of roofing material recycling request. No mention of this aspect of the Applicant's request was included in the Staff Report or at the public Hearing. The permit does not allow hauling, crushing, or stockpiling of roofing materials on the proposed site.

Jeff Fancher, Thurston County Representative
Michael Grenko
Susan Howard

Exhibits

At the hearing the following exhibits were submitted and were admitted as part of the official record:

EXHIBIT 1 Development Services Department Staff Report

Attachment a	Notice of Public Hearing
Attachment b	Special Use Permit Application
Attachment c	Notice of Application dated April 15, 1997
Attachment d	Zoning/Site Map
Attachment e	Preliminary Site, Grading, Storm Drainage and Erosion Control Plan dated August 13, 1998
Attachment f	Landscaping Plan received June 7, 2000
Attachment g	Mitigated Determination of NonSignificance issued April 25, 2000
Attachment h	March 31, 2000 Comment Memorandum from L. Darrell Cochran, Environmental Health Department
Attachment i	June 28, 2000 Comment Memorandum from Bernadette Sison Clemente, Roads and Transportation Services
Attachment j	August 2, 2000 Comment Letter from John Ward, Environmental Health Department
Attachment k	March 30, 2000 Noise Analysis and Mitigation Report from Michael A. Minor & Associates
Attachment l	June 6, 2000 Comment Letter from Susan Howard

EXHIBIT 2 September 4, 2000 Comment Letter from Lynn W. Larsen

EXHIBIT 3 September 1, 2000 Comment Letter from Mark V. Goodin, Olympic Air Pollution Control Authority

EXHIBIT 4 September 23, 1999 Memorandum from Jane Futterman, Deputy Prosecuting Attorney

EXHIBIT 5 July 28, 1999 Letter to Jeff Weiks from Linda Whitcher

EXHIBIT 6 August 17, 2000 Comment Letter from Matt Schlottman

Based upon the record developed at the open record public hearing, the following Findings of Fact and Conclusions are entered in support of the decision of the Hearings Examiner:

FINDINGS

1. The Applicant requested a SUP to operate a recycling facility for concrete, asphalt, and roofing materials and for top soil mixing on a site south of 93rd Avenue Southwest and east of Kimmie Street Southwest, in Thurston County. The five (5) acre site is zoned Light Industrial (LI) by Thurston County. *Exhibit 1, Attachment b.* The proposed operation would involve the hauling of concrete and asphalt from demolition sites and road projects, crushing the materials, and stockpiling the product on-site. *Exhibit 1, Attachment j.* Attached hereto and incorporated as part of these findings is the Site Plan for the proposed project. *Exhibit 1, Attachment g.*
2. The properties to the north, east, and west of the proposed site are zoned LI. There is a residence located within the LI zone on a neighboring parcel of property to the west property line of the proposed site. The property to the south is zoned Rural Residential 1 Dwelling Unit per 2 Acres and is currently occupied by American Heritage Campground. *Exhibit 1, Staff Report, page 2.*
3. The proposed facility would be located on the 2.5 acres of the five (5) acre site south of 93rd Avenue Southwest and east of Kimmie Street Southwest in Thurston County. *Exhibit 1, Attachment a.* The site is within the Tumwater Urban Growth Area (UGA). Solid waste handling facilities are permitted in the Tumwater UGA with a SUP. *Exhibit 1, Staff Report, page 3.*
4. An existing access to the proposed site off 93rd Avenue is available onto a 50-foot graveled road; there is no proposal for additional access. *Exhibit 1, Attachment b.* All traffic related to the proposed facility will enter and exit from 93rd Avenue Southwest onto the graveled road, which is located in an easement. *Exhibit 1, Staff Report, page 2.* The County Representative testified that 93rd Avenue Southwest can handle the additional traffic without any adverse impacts. *Clemente Testimony.* While the access to the proposed site will cross within a 100-foot radius of a single-family well, no crushing operations will occur within this radius area and no raw and/or processed product will be located within this area. *See Finding No. 1; Exhibit 1, Attachment j.*

5. There is an existing on-site pump house for water supply to the proposed facility. *Exhibit 1, Attachment b*. However, there is a small office on the site which has no plumbing at this time. *Exhibit 1, Attachment j*. “Sanicans” are proposed for sewage disposal since there are no existing sewage disposal utilities located on the site. *Exhibit 1, Attachment b and Attachment j*. To protect neighboring water supplies, the Thurston County Health Department suggested the following condition for approval: that any future plans for site structures requiring plumbing be reviewed by the Health Department for sewage disposal and public water supply issues. *Exhibit 1, Attachment j, page 2*.
6. There is no proposal for domestic drinking water to the site. *Exhibit 1, attachment j*.
7. Testimony was received at the public hearing expressing concern over the impact noise and dust will have on the Sweetwater Subdivision, which is located to the north of the proposed site. *Testimony of Howard and Grenko*. In Thurston County, the *Maximum Environmental Sound Levels* allowed for an industrial facility are 70 dBA. WAC 173-60-040. The Applicant submitted a Noise Analysis and Mitigation Report prepared by Michael Minor and Associates analyzing noise in locations to the west and to the south of the proposed site. *Exhibit 1, Attachment k, page 6*. The noise report contains no analysis of how the noise from the proposed facility will affect the property to the north; no testimony was offered at the public hearing; and, there are no provisions in the County recommendation addressing this concern.. *Exhibit 1, Attachment k, page 6*.
8. Pursuant to the noise report submitted by Applicant, and as condition of approval for the facility, the Thurston County Health Department recommended that a 15-foot noise berm be installed at the southern boundary and a 10-12 foot noise berm be installed on the western boundary of the proposed site. Upon review of the report, the Health Department determined that noise berm installation would bring the proposed facility into compliance with the current requirements of WAC 173-60 and mitigate noise impacts on properties to the south and west of the proposed site. *Exhibit 1, Staff Report, page 5; Exhibit 1, Attachment h and Attachment j, pages 2 and 3*.
9. Minimum landscaping requirements and standards are required for industrial sites in order to maintain and protect property values, enhance the general appearance of the Tumwater UGA, and provide residents of the Tumwater UGA with a sense of place. TCC 22.47. These provisions ensure landscaping criteria that include reducing the effects of noise, glare, dust, heat, and other objectionable activities generated by some land uses, as well as buffering and screening of adjacent properties. *Exhibit 1, Staff Report, page 4*. The Applicant submitted a landscaping plan for the proposed facility, which depicts that the noise berms will provide a visual barrier along the south and west sides of the property and will be landscaped with grass and wildflowers. Furthermore, a solid row of evergreen trees at least six (6) feet in height will be placed along the west property line to provide a sight obscuring barrier for the existing residence and along the entire south property line to provide a sight obscuring barrier for the campground. *Exhibit 1, Staff Report, page 5*. The landscaping plan did not address

northern boundary landscaping and the County did not require landscaping on the north property line.

10. Testimony was received at the public hearing from a witness who expressed concern with groundwater contamination by the proposed site. *Grenko Testimony*. While there is a shallow water table underlying the proposed site, the Thurston County Public Health Department analyzed the site and determined that, by excluding roofing material recycling from the proposed facility, the site poses minimal risk of groundwater contamination. No water monitoring plan is required. As conditions for approval, the Health Department recommended a Solid Waste Operating Permit be issued by the Solid Waste Section prior to the start of operations and that no roofing materials may be brought onto the site and recycled without prior approval from the Solid Waste Section. *Exhibit 1, Attachment j, page 2*.
11. Pursuant to the State Environmental Policy Act (SEPA), Thurston County was designated lead agency for review of environmental impacts caused by the proposal. The County issued a Mitigated Determination of NonSignificance (MDNS) on April 25, 2000 that became final on May 9, 2000. The threshold decision of the MDNS indicated the proposed facility would not have a probable significant adverse impact upon the environment. *Exhibit 1, Attachment g*.
12. Written notice of the public hearing was sent to all property owners within 300 feet of the site on August 22, 2000 and notice was published in The Olympian on August 25, 2000, at least ten (10) days prior to the hearing. Notice was posted on-site on August 25, 2000. *Exhibit 1, Staff Report, page 3; Exhibit 1, Attachment a*. Only one comment was received from an adjacent property owner concerning the proposed project; the property owner raised concern that her family well is within 100 feet of the property line and is not shown on the site plan.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has 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. Chapter 36.70 RCW authorizes the Hearing Examiner to hear and decide cases in the manner determined by County ordinances and consistent with state law. The Thurston County Board of Commissioners requires the Hearing Examiner to conduct a public hearing and render a decision based on the record within ten (10) working days of the close of the hearing. The decision must be consistent with the general and specific criteria for review set forth in Chapter 20.54 of the Thurston County Code. Authority to approve permits of this type is granted to the Hearing Examiner under TCC 14.32.087.

General Review Standards for Special Use Permits

The Hearing Examiner may approve an application for a Special Use Permit only if the following standards set forth in Section 22.56.050 of the Thurston County Code are met:

1. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Tumwater Joint 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 purposes 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. This 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.
 - b. Services. The use will be adequately served 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 Applicant requested a SUP to operate a recycling facility for concrete, asphalt, and roofing materials and for top soil mixing on a site south of 93rd Avenue Southwest and east of Kimmie Street Southwest, which is in a Light Industrial (LI) zone in Thurston County. The proposed operation would consist of hauling concrete and asphalt from demolition sites and road projects, crushing the materials, and stockpiling the product on-site. *Finding No. 1.*
2. With conditions, the proposed use at the specified location will comply with the Tumwater Joint Plan and all applicable Federal, State, Regional, and Thurston County laws or plans. The proposed noise berms to be installed on the south and west sides of the property ensures the noise level requirements of WAC 173-60 are satisfied. Furthermore, the Applicant's landscaping plan satisfies the requirement of TCC 22.47.020(A) by providing a very dense sight barrier and physical barrier between the proposed site and the neighboring properties. *Findings of Fact Nos. 1, 3, 7, 8, 10.* The Applicant must address the impacts from noise and landscaping on the north side of the site.

3. The proposed special use is appropriate for the site. The site for the facility is located in a LI zone of Thurston County and shall comply with the general purposes and intent of the applicable zoning district regulations and sub-area plans. *Findings of Fact Nos. 1, 2, 3.*
4. Thurston County Development Services reviewed the proposed site plan and determined that with satisfaction of conditions of approval, there will be no substantial or undue adverse impacts on adjacent properties, neighborhood character, natural environment, traffic conditions, public property or facilities. The boundaries of the site facing the residence and the campground will be buffered from noise with the installation of appropriate noise berms. The noise berms will be landscaped with dense vegetation to buffer and screen the neighboring properties, thereby insuring no adverse impact on property values will result from the site installation. The proposed access road to the site will not burden traffic in the area. Finally, by excluding roofing materials from the proposed use, the activity for the site poses minimal risk of groundwater contamination. *Findings of Fact Nos. 1, 2, 5, 7, 8, 9, 10.*
5. The proposal will satisfy the criterion of TCC 22.56.050(3)(A). The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, or utilities existing or planned to serve the area. *Findings of Fact Nos. 4, 5, 6.*

DECISION

Based upon the preceding Findings of Fact and Conclusions, the request for a Special Use Permit to operate a recycling facility for concrete, rock and asphalt on the 2.5 acres of a five (5) acre site south of 93rd Avenue Southwest and east of Kimmie Street Southwest in Thurston County is **GRANTED**, subject to the following conditions:

- A. Hours of operation shall be from 7:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturday. No operations are allowed on Sunday or federally recognized holidays.
- B. Comply with all mitigation measures identified in the Mitigated Determination of NonSignificance dated April 25, 2000.
- C. Comply with all requirements of the Thurston County Environmental Health Department (Attachments h and j) and the Thurston County Roads and Transportation Services Department (Attachment i).
- D. Obtain a Solid Waste Operating Permit from the Solid Waste Section of the Thurston County Environmental Health Department prior to the start of operations.
- E. All operations shall be operated in conformance with the Olympic Air Pollution Control Authority regulations.

- F. Noise levels shall comply with standards set forth in WAC 173-60. To accomplish this, the Applicant shall comply with the Noise Analysis and Mitigation Report prepared by Michael Minor & Associates and dated March 30, 2000 (Attachment k). Noise berms shall be installed and landscaped along the west and south boundaries of the property as indicated on the site plan and landscape plan (Attachments e and f). The Applicant shall notify the Thurston County Environmental Health Department when crushing operations begin so that noise levels can be measured to ensure Thurston County noise standards are being met. Annual noise reports shall be submitted when the normal crushing, loading, and hauling activities are occurring.
- G. To meet the landscaping requirements of TCC 22.47, the following conditions shall be met prior to beginning operations:
1. A solid row of evergreen trees, at least six (6) feet in height at time of planting, shall be planted within a 10 (ten) foot wide planting area along the west and south property lines as indicated on the landscaping plan (Attachment f) to provide visual relief for neighboring residential uses.
 2. Noise berms shall be planted with grass and wildflowers.
 3. An Irrevocable Assignment for 125 percent of the cost of materials and labor shall be required to provide security in lieu of completion of required installation and maintenance of landscaping for three years. The Applicant shall provide a cost estimate prepared by a licensed Washington Certified Nurseryman, Washington Certified Landscaper, or Washington Landscape Architect.
- H. All activities related to the proposed solid waste handling facility shall be contained on the northern 2.5 acres of the five (5) acre parcel, as depicted on the site plan (Attachment e).
- I. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of this use will require approval of a new or amended Special Use Permit. The Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
- J. Upon commencing operations, for six (6) months the Applicant shall monitor noise from points within the Sweetwater Subdivision, which is located to the north of the proposed site. The Applicant shall submit the data from the monitors to the Development Services Department who shall review it with noise standards of the County. If noise is determined to exceed the noise standards the Hearing shall be reopened for the purpose of defining the mitigation from the noise impacts.

- K. The Thurston County Health Department shall review the site in two (2) years to determine if the “Sanicans” adequately handle sewerage or if the installation of a sewage system is required.

Decided this 13th day of September 2000.

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 22.62.020(c)(10)

K:\zoning.lu\DECISION\SUP\970240.2.doc