

**BEFORE THE HEARINGS EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application	)	No. SUPT-97-0570
of Cascade Sand & Gravel	)	
For Approval of a Special Use Permit	)	FINDINGS, CONCLUSIONS
_____	)	AND DECISION

**SUMMARY OF DECISION**

The request for a Special Use Permit to place a concrete batching plant at the existing gravel mine in the MDR 1-6/1 zone is **GRANTED**, subject to conditions. The request for approval of the manufacturing of concrete products at the existing gravel mine in the MDR 1-6/1 zone is **DENIED** for reasons stated herein.

**SUMMARY OF RECORD**

Request:

Cascade Sand & Gravel (Applicant) requests a Special Use Permit to place a concrete batching plant and a facility for the manufacturing of concrete produces at the existing gravel mine located at 6802 196th SW, Rochester, Washington.

Hearing Date:

A hearing on the request was held before the Hearing Examiner of Thurston County on October 27, 1997. The hearing was continued until December 1, 1997, to allow for additional notice in compliance with county codes and to allow the county to review the request for a concrete manufacturing facility and issue an administrative determination.

Testimony:

At the hearing, the following individuals presented testimony under oath:

Gary Cooper;  
Steve Hatton;  
Rod Liseth.

Exhibits:

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

Exhibit 1: Staff Report prepared by Development Services Department, with the following attachments:

Attachment a:	Notice of Hearing and Mailing List;
Attachment b:	Site Plans;
Attachment c:	September 10, 1997 Comment Letter from Environmental Health

Department;

Attachment d: September 9, 1997 Comment Memorandum from Environmental Health Department;

Attachment e: September 8, 1997 Comment Memorandum from Roads & Transportation Services;

Attachment f: August 15, 1997 Letter to Godat & Associates from Roads & Transportation Services;

Attachment g: August 12, 1997 Letter to Steve Hatton from Development Services;

Attachment h: July 14, 1997 Comment Memorandum from Roads & Transportation Services;

Attachment i: July 3, 1997 Comment Memorandum from Roads & Transportation Services;

Attachment j: August 1, 1997 Memorandum from Roads & Transportation Services;

Attachment k: Legal Description;

Attachment l: October 7, 1997 Mitigated Determination of Non-Significance;

Attachment m: February 17, 1997 Hearing Examiner Decision on Case SUP-93-017.

Exhibit 2: Addendum to Staff Report with Date of 12/1/97.

Based upon the exhibits and the testimony submitted at the public hearing, the following Findings and Conclusions are entered by the Hearing Examiner.

### **FINDINGS**

1. The applicant, Cascade Sand & Gravel, requests a Special Use Permit to install a concrete batch plant as an addition to an existing gravel mining operation on a 78 acre site. The batch plant will be used to manufacture concrete from existing gravel sources. The applicant also proposes to add a manufacturing facility to produce concrete products. These products would be limited to ecology blocks and septic tanks. The manufacturing facility would consist of a covered area within which metal forms could be assembled to form the concrete into the product. The instant application is presented as an amendment to a Special Use Permit, SUP-93-017, issued for this site on February 17, 1997. *Exhibit*

*1, Staff Report; Attachment m; Testimony of Mr. Hatton.*

2. The existing mining operation is surrounded by Hoss Field (a baseball field) to the west, a mix of agriculture and single family dwellings distributed on all sides, and an existing concrete batch plant, manufacturing site and gravel mining operation on the northeast side, immediately adjacent to the proposal area. There are 11 gravel pit operations within a 2 mile radius of the site and 4 operations within a .5 mile radius of the site. The subject property is flat pasture land. *Exhibit 1, Staff Report; Attachment m; Site View.*
3. The proposal area overlaps two zoning districts, the Light Industrial Zoning District (LI) and the Medium Density Residential -- One to Six Units Per Acre Zoning District (MDR 1-6/1). Both the LI and MDR 1-6/1 districts allow for mineral extraction operations and their accessory uses, subject to approval of a Special Use Permit. As an accessory use to the existing mining operation, the proposed batch plant and manufacturing facility would be subject to all provisions of the previous Special Use Permit issued on this operation, including all the provisions of the County's Mineral Extraction Ordinance (Chapter 17.20 TCC). *Exhibit 1, Staff Report; Testimony of Mr. Cooper.*
4. The proposed concrete batch plant and manufacturing facility would be located in the MDR 1-6/1 zoning district. The purpose of the MDR 1-6/1 zoning district which, while geared primarily toward residential development, allows for the "current existence of relatively high-intensity uses." The MDR 1-6/1 zone permits mineral extraction facilities and their accessory uses after approval of a Special Use Permit. *Exhibit 1, Staff Report; citing Chapter 20.17 of the TC Zoning Code.*
5. About 8 to 10 gravel trucks enter and leave the site each day. *Attachment m.* The applicant has submitted a traffic study which indicates that traffic will not be substantially altered beyond the present impacts of the existing facility. The amount of traffic may be reduced if batching and manufacturing can be done on-site as this eliminates the need to truck raw materials to another site. *Testimony of Mr. Hatton.*
6. Thurston County was designated as lead agency for review of environmental impacts from the proposal. A Mitigated Determination of NonSignificance (MDNS) was issued on October 7, 1997. The MDNS was made final on October 22, 1997. No appeals were filed. *Exhibit 1, Attachment l.*

7. Written notice of the public hearing was sent to all property owners within 300 feet of the site on October 14, 1997 and notice was published in The Olympian on October 15, 1997, at least ten (10) days prior to the hearing. Notice was posted on October 17, 1997. *Exhibit 1, Staff Report.* Additional notice of the continued hearing was completed in accordance with TCC 20.60.020(3) which requires notice be given by mail to all those within 2,600 feet of the subject property. *Exhibit 2.* One citizen filed written testimony in opposition to the county's recommendation to change the zoning. *Testimony of Ms. Harper.* Another citizen appeared at the continued hearing and presented testimony in opposition to the proposal to amend the zoning code, primarily due to the existence of other concrete manufacturing facilities in the area. *Testimony of Mr. Liseth.*
8. The County issued an Administrative Determination on December 1, 1997, which concluded that the manufacture of concrete products does not qualify as a permitted or special use in the MDR 1-6/1 zone. This decision is based on the reasoning that manufacturing of concrete products is expressly listed as a permitted use in the Light Industrial zone. Since it is listed in one zoning area and not in the other, the county concludes it is not allowed in the MDR 1-6/1 zone. This decision has not been appealed. *Exhibit 2.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner is granted 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 Hearings 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 Hearings Examiner to conduct a public hearing and render a decision based on the record within 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.

### Criteria for Review

#### General Review Standards for Special Use Permits:

An application for a Special Use Permit may be approved by the Hearing Examiner only if the following standards are also met as set forth in Section 20.54.040 of the Thurston County Code:

1. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive 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 purpose 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 Permit 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

##### Concrete Batch Facility

1. As conditioned, the proposed use at the specified location will comply with the Thurston County Comprehensive Plan and all applicable Federal, State, Regional, and Thurston County laws or plans. Thurston County has adopted a detailed ordinance addressing mineral extraction activities. The Department of Natural Resources also has adopted detailed regulations that address mineral extraction activities. Several departments within the County have reviewed this proposal and have referenced specific regulations that will control the proposed activity. The applicant's proposed concrete batch facility can operate in compliance with these laws. *Findings of Fact No. 1,3,4 & 6.*
2. The proposed use complies with the general purpose and intent of the applicable zoning district regulations and sub-area plans. Open space, lot, setback, and bulk requirements are no less than that specified for the zoning district in which the proposed use is located. The MDR zoning in effect at the time of the application allows a gravel operation and encourages a "mix of uses." This proposal is consistent with that zoning designation. *Finding of Fact No. 4.*
3. As conditioned, the proposed special use is appropriate in the location for which it is proposed based on the following criteria:
  - a. Impact. The proposed use will 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.

No new utilities or improvements are necessary to serve the proposed concrete batch facility. With conditions, the proposed concrete batch facility can operate without undue adverse impacts on surrounding properties. The existing mining operation greater impacts than those associated with the mixing of concrete. The addition of a batch facility may reduce impacts due to a reduction in truck traffic. Conditions of approval pertaining to noise control, dust control, water quality protection and phased development are necessary to ensure that the neighborhood character and natural environment will not be adversely impacted. *Findings of Fact No. 1, 2, 5 & 6.*

#### Manufacturing of Concrete Products

The applicant proposes to manufacture concrete products, including ecology blocks and septic tanks, with the MDR zone. The County Department of Development Services, through the decision of one of its planners, determined that the MDR 1-6/1 zone does not allow for the manufacture of concrete products. The Examiner must give "substantial weight" to the interpretation of the agency charged with administering and enforcing the zoning code. See, *Bradley v. Dept. of Labor & Ind.*, 52 Wash.2d 780, (1958); *White v. State*, 49 Wash.2d 716, (1957);, *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, (1975). Thus, the Examiner must find that the proposed use does not meet the criteria for approval of a Special Use Permit request and must be denied. Since the proposed use does not comply with the applicable zoning district regulations, the other criteria for approval of a Special Use Permit need not be discussed in this decision. *Finding of Fact No. 8.*

The Examiner notes that the applicant has several options to pursue the manufacture of concrete products. The LI zone allows the manufacture of concrete products as a permitted use outright. Manufacturing of concrete products on the site could occur on that portion of the applicant's site that is in the LI. The applicant could also arrange for the manufacture of concrete products at a legally existing concrete manufacturing facility in the area. Finally, the applicant could elect to appeal the Administrative Decision prohibiting the location of a concrete manufacturing facility within the MDR zone. The Examiner does not recommend any of these strategies but merely notes some of the options available to the applicant.

The Examiner rejects the recommendation to approve the manufacturing with a condition that the Zoning Code be amended to allow the use within the zone. It is the opinion of the Examiner that he must interpret the code as adopted by the Board of Commissioners (BOCC). It is not the role of the Examiner to suggest the BOCC may have "erred" or engaged in an "oversight" when adopting the zoning code. If the BOCC desires to amend the code in response to this decision, it may clearly do so. It is inappropriate legislative behavior for the Examiner to suggest when and how the substantive provisions of the code should be amended.

### DECISIONS

- A. Based upon the above Findings and Conclusions, the Hearing Examiner **APPROVES** the Special Use Permit application to place a concrete batching plant at the existing gravel mine located at 6802 196th SW, Rochester, Thurston County, Washington, subject to the following conditions:
1. Prior to or in conjunction with the initiation of gravel extraction, all regulations and requirements of the Thurston County Environmental Health Department, Thurston County Roads and Transportation Services Department, Thurston County Fire Marshal, Thurston County Development Services Department, Olympic Air Pollution Control Authority, Washington State Department of Natural Resources, and the Washington State Department of Ecology must be met..
  2. The proposal shall remain in compliance with all conditions of the previously approved Special Use Permit SUP-93-017, issued February 17, 1997.
- B. The proposal to manufacture concrete products within the MDR 1-6/1 zone is **DENIED** as it is in conflict with the provisions of the zoning code as articulated in Exhibit 2.

Dated this 9th day of December, 1997.

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Theodore Paul Hunter  
Hearing Examiner for Thurston County