



COUNTY COMMISSIONERS

Cathy Wolfe
District One

Sandra Romero
District Two

Bud Blake
District Three

HEARING EXAMINER

BEFORE THE THURSTON COUNTY HEARING EXAMINER

In the Matter of the Application of)	
)	Project # 2014103531
Daniel O'Neill, Applicant)	
)	O'Neill & Sons
)	
)	
)	
For Five Year Review of)	
Special use permit SUP 2006104333)	FINDINGS, CONCLUSIONS, AND
for a continuation of a 25-acre gravel mine)	DECISION
facility within an 87.69 parcel)	

SUMMARY OF DECISION

The request for approval of a five-year review special use permit to authorize ongoing surface mining pursuant to previous approvals SUP 6-90, SUPT 97-1791, SUPT 000337, and SUP 2006104333 within an approved 25-acre gravel mine site within the 87.69-acre subject parcel is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request

Daniel O'Neill of O'Neill & Sons (Applicant) seeks approval of a five-year review special use permit to authorize ongoing surface mining pursuant to previous approvals SUP 6-90, SUPT 97-1791, SUPT 000337, and SUP 2006104333 within the approved 25-acre gravel mine site within the 87.69-acre subject parcel.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the five-year review request on February 16, 2016. At adjournment, the record was held open for the submission of a detailed site plan of the 25-acre mine approved in 2000 via a 15-acre expansion of the original mine (SUPT 000337). As memorialized in the February 19, 2016 post-hearing order, the record was held open for additional items and the parties agreed to extend the deadline for decision issuance to March 15, 2016. Items were timely submitted and admitted. During deliberations, the record was reopened on March 8, 2016 to require additional information from the Applicant and the County; the reopened record closed on March 22, 2016.

Testimony

The following individuals submitted testimony under oath at the open record public hearing:

Leah Davis, Associate Planner, Resource Stewardship Department
Dawn Peebles, County Health Department Environmental Health Division
Arthur Saint, County Public Works Department
Amy Head, SCJ Alliance, Applicant Representative
Daniel O'Neill, Applicant
Peter Davis

Exhibits

The following exhibits were admitted in the record of this matter:

1. Resource Stewardship Department Staff Report, with the following attachments:
 - Attachment a Notice of Public Hearing
 - Attachment b Special Use Permit Application (5-year review)
 - Attachment c Special use Application Supplemental Information Narrative
 - Attachment d Site plan
 - Attachment e SUP-6-90 Hearing Examiner "Findings, Conclusions, and Decision," dated June 11, 1991
 - Attachment f SUPT 97-1791 Hearing Examiner "Findings, Conclusions, and Decision," dated January 28, 1998.
 - Attachment g SUPT 000337 Hearing Examiner "Findings, Conclusions, and Decision," dated August 31, 2000.
 - Attachment h SUP 2006104333 Hearing Examiner "Findings, Conclusions, and Decision," dated October 15, 2007
 - Attachment i Mitigated Determination of Non-Significance, dated March 20, 1991 (SEPA 6-90).
 - Attachment j Mitigated Determination of Non-Significance, dated July 18, 2000 (SEPA 000337).
 - Attachment k Comment letter from the Environmental Health, dated March 10, 2015
 - Attachment l Comment letter from the Public Works Development Services, dated August 26, 2014
 - Attachment m Comment email from ORCAA, dated February 18, 2015
 - Attachment n Comment Letter from Department of Ecology, dated August 18, 2014
 - Attachment o Comment Letter from the Thurston County Public Works, Noxious Weeds Division, dated April 30, 2015.

- Attachment p Follow-up email from Noxious Weeds Division, dated December 28, 2015.
- Attachment q Email from Thurston County Environmental Health Division, Solid and Hazardous Waste Program, dated January 4, 2016
- Attachment r Master Application, received July 28, 2014
- Attachment s Development Services Staff Report for SUP-6-90, dated May 20, 1991
- Attachment t Notice of Application, dated February 3, 2015
- Attachment u Documentation regarding 2010 temporary authorization to exceed the maximum number of truck trips established in earlier approvals
- Attachment v Noxious weed/vegetation management plan prepared for Thurston County
- Attachment w June 2008 baseline noise study
- Attachment x Memorandum by N. Hehehmann, dated April 29, 2015
- Attachment z Site Plan from the 2000 mine expansion SUP review
2. Two photographs of public posting on site
 3. 2015 Aerial photograph of site
 4. Incorrect enlarged site plan, dated July 28, 2014
 5. Department of Natural Resources Reclamation Plan, dated August 3, 2015
 6. Applicant's Revised Site Plan requested on the record at hearing March 3, 2016, with cover letter of same date
 7. Resource Stewardship memorandum regarding revised recommended Condition F
 8. Resource Stewardship response to post-hearing order, March 14, 2016
 9. Final revised site plan for approved 25-acre mine site, March 22, 2016

Also included in the record are the February 19, 2016 Post-Hearing Order Setting Submission Schedule and the March 8, 2016 Post-Hearing Order Reopening the record.

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

Background

1. The Applicant requested approval of a five-year review special use permit to authorized ongoing mining at the O'Neill & Sons mine.¹ Currently, the surface mining operation is permitted within a 25-acre footprint, to include buffer, excavation, and processing areas,

¹ The legal description of the subject property is a portion of Sections 20 and 21, Township 17 North, Range 1 West, W.M.; known as Tax Parcel Number 11721320100 and 11720410000. *Exhibit 1.*

as well as areas that have already been mined and reclaimed to approved subsequent uses. Current production varies based on demand, but can be less than 200 truck loads per year. The mine is essentially "a one-man operation." The Applicant is in the process of reclaiming all previously mined areas for nursery use. All active mining is presently west of the sediment pond. *Exhibits 1, 1.K, and 9; O'Neill Testimony.*

2. The existing mine was approved through three previously issued special use permits. The original application was approved in June 1991 (SUP 6-90), creating 10-acre mining operation (Exhibit 1.E). The first five year review of the 10-acre mine, then required by condition of approval, was approved in January 1998 under SUPT 9701791 (Exhibit 1.F). In August 2000, a 15-acre expansion of the mine was approved through SUPT 000337 (Exhibit 1.G), for a total permitted area of 25 acres. A second five year review was approved in November 2007 via SUPT 2006104333 (Exhibit 1.H). The instant application seeks approval of the five-year review of the 25-acre mine consistent with Thurston County Code (TCC) 20.54.070.21.e, which states:

Any permit issued pursuant to this chapter shall be reviewed by the approval authority no less frequently than every five years from the date of the decision to approve the permit. The approval authority shall determine the frequency of permit review. The director may authorize a reasonable fee for this review. 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.

Exhibits 1, 1B, 1C, 1E, 1F, 1G, and 1H. The purpose of five-year review is to determine if the mining operation is in compliance with the conditions of the special use permit(s) under which the mine operates, and to determine whether the conditions of the existing permit(s) are adequate to address the impacts of the mining operation. *TCC 20.54.070(21)(e).*

3. The original 10-acre mine site has been mined and reclaimed, including recontouring and planting. The 15-acre expansion area approved in 2000 is currently being mined for soil and gravel; in addition, the expansion area contains a sediment pond, infiltration pond, stockpiling site, and scale office. The site is accessed from 103rd Avenue and Shermer Lane SE. *Exhibits 1, 9.*
4. The Applicant has submitted a separate special use permit application (No. 2007101506) for a 45-acre expansion of the mine, which if approved would result in a total mine area of 70 acres. A separate public hearing would be held for the proposed expansion; the instant proceedings and decision do not address it. *Exhibit 1; Leah Davis Testimony.*
5. The subject property has a Rural Residential/Resource – One Dwelling Unit per Five Acres (RRR1/5) zoning designation. It is designated Mineral Resource Lands in accordance with TCC 20.30B. Mineral extraction activities are permitted within the RRR 1/5 upon special use permit approval, provided the Washington State Department of

Natural Resources approves a reclamation plan for the site. The mine's reclamation plan was approved by DNR in March 2006. *Exhibits 1, 5.*

6. Surrounding properties share the site's RRR 1/5 zoning and are developed with the following land uses: vacant timber lands to the north and west; scattered single-family residential development to the south; and County Parks property comprised of the Chehalis Western Trail, and scattered single-family residences to the east. The adjacent 250 acres are personally owned by the Applicant and his sister. *Exhibit 1; Dan O'Neill Testimony.*

Approvals Under Review

7. Permit SUP 6-90 contained conditions requiring the following: approval of the "plan submitted"; compliance with the requirements of the health department, public works department, and fire marshal's office; restricted permitted activities/machinery to a 240 square foot scale house/office building, front end loaders, diesel trucks, tractors, and crusher; retention of a 100-foot buffer area from "all property lines" no gravel, trees, or ground cover could be removed; restricting access to a new private road connecting to 103rd Avenue (with a prohibition of removal of trees between the new road and residences to the west); establishing hours of operation 7 to 5, Monday through Friday, and 9 to 5 on Saturday; a ten year total mine life (sunset clause), with hearing examiner review at five years; low intensity down-shielded lighting; conformance with regional air quality agency regulations; dust control during dry weather; restriction to one 32 square foot sign at the 103rd Avenue entrance; submission of evidence of Washington State Department of Natural Resources (DNR) approval of a reclamation plan including tree planting prior to commencement; conveyance of stormwater runoff from active excavation areas to an on-site sedimentation pond and retention of stormwater on-site; provision of 2:1 maximum slopes in all reclaimed areas unless otherwise permitted by DNR; implementation of an erosion/sediment control plan; any future composting on-site must be covered and runoff therefrom retained on-site; compliance with noise levels in WAC 173-60-040; provision of proof of DOE approval of water rights used for wash or process water; muffling and maintenance of equipment used on-site; and compliance with the listed conditions. *Exhibits 1.E and 1.S.*
8. The first five year review decision, SUPT-97-1791, imposed the same conditions as the initial permit with two changes. First, the ten-year life of mine restriction was removed. Second, five year review was imposed as a permanent requirement for the life of the mining operation. Both SUP 6-90 and SUPT-97-1791 expressly placed the burden for achieving five year review within five years on the Applicant. Both approvals restricted mining on-site to compliance "with the site plan as approved by the Hearing Examiner for the mineral extraction activities." *Exhibits 1.E, 1.F, and 1.S.*
9. In 2000, SUPT 000337 approved a 15-acre expansion, for a total 25-acre mine area with the subject property. The expansion was subject to some additional conditions, including: ongoing compliance with the previous two permits' conditions; restriction of truck volumes to a yearly average of 50 trips per week, with a maximum of 100 trips per week during peak operations; required compliance with the Thurston County mineral

extraction code; Applicant provision of repairs/improvements to 103rd Avenue needed to reduce traffic noise and dust, or to improve traffic safety; no additional lighting or signage was allowed with the expansion; and crushing and washing of mined material was prohibited from taking place on the 15-acre expansion area. This approval again stated that it was the Applicant's responsibility to ensure five year review occurred "within the five year time period." *Exhibit 1.G.*

10. The first five year review of the expanded mine approved in August 2000 was completed in November 2007. The conditions of this approval required compliance with all three previous approvals. They also required the following: consultation with the Thurston County Noxious Weed Control Department to establish a noxious weed management plan within 90 days; that all development shall be in substantial compliance with the approved site plan; and that the special use permit undergo five year review. The last sentence of the last condition stated: "The next five year review is scheduled for 2011." *Exhibit 1.H.*
11. The instant proceedings are that next five year review. Planning Staff testified that the related application for mine expansion was submitted in 2007 and has been held up due to issues related to hydrogeological review. Staff had attempted to combine the instant five year review with the hearing on expansion, which in part explains the tardiness of the current proceedings, as do issues related to County staffing levels. *Leah Davis Testimony.*
12. The 25-acre mining operation was previously reviewed for compliance with the State Environmental Policy Act (SEPA) during review of both the initial 10-acre special use permit (SUP 6-90) in 1991 and the 15-acre expansion area (SUPT 000337) in 2000. Five year reviews are exempt from SEPA review. In processing the instant application, Staff reviewed current operations for compliance with both mitigated determinations of non-significance (MDNSs) issued with the special use permits. *Exhibits 1, 1.J, 1.I; Leah Davis Testimony.*
13. The 1991 MDNS contained three mitigation measures requiring the following: all turbid water shall be retained on-site; an erosion/sediment control plan prepared by a qualified engineer must be submitted and approved by public works prior to grading permit issuance; and that any future composting on-site be covered and runoff generated be retained on-site. *Exhibit 1.I.*
14. The 2000 MDNS contained extensive mitigation measures, paraphrased as follows: horizontal expansion to the west only was approved, not mining into groundwater or to the east; provision of a 25-foot no-cut buffer of existing trees and shrubs around a Type 5 stream in the northern portion of the expansion area, including flagging of the buffer edge at 20-foot intervals and placement of a specific note on the mine map or survey document; compliance with Public Works requirements and the 1994 Drainage Design and Erosion Control Manual; compliance with noise standards in WAC 173-60, including provision of a baseline noise study at the time mining begins (in the expansion area), with additional noise studies/reporting as required by the Environmental Health Division

(EHD); filing of a notice of intent (NOI) to use rock crusher on-site with the regional clean air agency prior to commencement of crushing; compliance with EHD requirements regarding on-site wastewater management systems and water supplies; receipt and posting of a forest lands conversion permit prior to timber harvest on-site; flagging and checking of any identified nest trees prior to commencement of logging in a given area; restriction of forestry activities hours of operation; and prohibition against cutting or any disturbance to Oregon white oak trees on-site or their understories without approval of a habitat management plan. *Exhibit 1.J.*

15. The purpose of the Thurston County mineral extraction code, adopted June 28, 1993 (Ordinance No. 10368) and codified as TCC Chapter 17.20, is to increase the protection of ground and surface water from the effects of mineral extraction, to lessen conflicts between mineral extraction/asphalt plants and nearby land uses, and to continue the availability of mined materials and asphalt to the citizens and commerce of the area. *TCC 17.20.010.* The mineral extraction code establishes specific standards for mine-related activities relating to spill prevention, fuel/hazardous materials management, drainage/stormwater control, wash and process water, domestic water supplies, roads, dust control, noise, hours of operation, fencing, lighting, mine rehabilitation/conservation, vehicle preparation, site access, contact information for the public, hydrogeological study, groundwater monitoring, well separation, setbacks, stockpiles, control of vibration, landscaping/screening, parking, mine registration, and inspections. *TCC Chapter 17.20.* Pursuant to the ordinance:

No extraction shall be conducted closer than one hundred feet to the boundary of any district in which extraction is permitted or allowed by special use nor closer than one hundred feet from the property boundary at the time of application. However, the setback may be reduced by the approval authority if, due to topography, or adjoining easements or designated resource lands of long-term commercial significance, the purposes of this chapter can be met with the reduced setback. The setback area shall not be used for any other use in conjunction with extraction except access streets, berms, fencing, landscaping and signs.

TCC 17.20.230. The instant application, and all applications for mining approvals of the existing mine after 1993 (SUPT 97-1791, SUPT 000337, and SUP 2006114627) were reviewed for compliance with the provisions of Chapter 17.20. According to Resource Stewardship reviewing staff, minor additional conditions are needed to ensure the mining operations remain consistent with the requirements of the ordinance. *Exhibit 1.* The recommended additional conditions, as revised at and after the hearing, are in the record Exhibits 1, 7, and 9.

16. In 2010, the Applicant sought a temporary increase in the truck trip volume restrictions to address the requirements of a specific project, up to 80 truck trips in and 80 truck trips out of the mine would occur daily for a 2½ to three week period. The request was approved for a temporary window expiring November 17, 2010. Conditions of its approval required: truck speeds on 103rd Avenue SE and Shermer Lane SE to be maintained between 15 and 25 mph, with drivers making every effort not to delay other vehicles; placement of “Truck Crossing” signs on Stedman and Waldrick Roads, 500 feet

on both sides of the 103rd Avenue intersections, while trucks are hauling; and compliance with County requirements for improvements to the haul route to be determined by Public Works after an evaluation of the haul route at the conclusion of the increased hauling period. *Exhibit 1.U.*

17. Apparently in response to an April 2015 request from the County Public Works Noxious Weeds Division, the Applicant submitted a vegetation management plan dated June 2015 addressing noxious weed and other vegetation management for the mine site and adjoining property under Applicant control. *Exhibits 1.0 and 1.V.* Noxious Weeds Division Staff reviewed the submitted plan and commented that it is a "little rough, but since it stresses cooperation with TC Noxious Weeds, it will do" and that they will work with the Applicant on execution of the plan. *Exhibit 1.P.* Resource Stewardship Staff recommended a condition of SUP approval requiring the Applicant to work with the County to control vegetation consistent with applicable regulations. *Exhibit 1.*
18. County Environmental Health Division (EHD) reviewed the proposed five year review and existing operation for compliance with applicable provisions. EHD Staff noted the mine has one well for process water (not domestic use) and no on-site sewage systems; no domestic water is required. On-site hazardous materials use is limited to fuel. Staff noted that the Applicant's spill prevention and response plan is adequate. EHD Staff also noted that a June 2008 noise study was submitted and is sufficient to meet mineral extraction code and permit condition requirements for noise study for the current operation. Staff noted that if EHD receives noise complaints in the future, quarterly noise monitoring assessment and reporting will be required. EHD recommended approval subject to conditions. *Exhibits 1.X, 1.W, and 1.K.*
19. The County EHD Hazardous Waste Division indicated that they did not receive 2015 registration fees for the existing mine operation, so the 2016 invoice was registration fees for two years. As of January 4, 2016, no EHD Staff had visited the site for inspection. *Exhibit 1.Q.* Pursuant to TCC 17.20.150.C, a mineral extraction use shall be considered vacated if the mining operator has not timely submitted a complete registration form and related fee to Thurston County per Section 17.20.140 for three consecutive years.
20. The original permit authorized the use of rock crushers on-site; however, none have ever been used. *Exhibit 1.E.* Rock crusher use was only authorized within the original 10-acre mine boundary, which is fully mined and reclaimed; it is prohibited in the 15-acre expansion area. *Exhibit 1.G.* The Olympic Region Clean Air Agency (ORCAA) submitted comments indicating that permitting and registration may be required if large capacity rock crushers greater than or equal to 25 tons per hour or engines with a rated power or 50 horsepower or more are utilized. *Exhibit 1.M.*
21. Washington State Department of Ecology (DOE) submitted the position that DOE's May 14, 2007 comments related to applicability of the state's the toxic cleanup program are still applicable on-site. *Exhibit 1.N.*

22. Notice of public hearing was sent to all property owners within 2,600 feet of the site and to other interested parties on February 1, 2016. Notice of hearing was posted onsite and was published in The Olympian on February 5, 2016. There was no public comment submitted prior to hearing. *Exhibit 1 and 1A.*
23. At hearing, the owner of 35 adjoining acres northeast of the mine site testified that while walks on his property, he sometimes experiences a very strong smell coming from the subject property; he testified that it smells like septic effluent and inquired as to the source. He also testified that the day prior to the hearing, noisy equipment operating on-site next to the southwest corner of his parcel was very loud. In addition, he stated that the mine operator's trucks use a loop road across the Chehalis Western Trail to turn around, and when they dump loads, the sound reverberates through his property. Finally, he testified that he enjoys driving back roads to his property and has on more than one occasion gotten stuck behind gravel trucks, which is not fun because they travel slowly. He asked if the gravel trucks could find other routes. The neighbor testified that he recently purchased his property, it is currently vacant, and he enjoys walking there. *Peter Davis Testimony.*
24. In response to this public comment, County Environmental Health Division (EHD) Staff noted that EHD is the department that receives and follows up on noise complaints. Regarding the smell, there is no septic on-site. *Dawn Peebles Testimony.* In response, the Applicant testified that there is an existing malt pit on the subject property, where spent grain from the production of beer was dumped on-site for a period of time from the 1960s to the 1980s. No more malt has been brought to the site since 1990. He testified that the odor is probably from mushroom compost, the byproduct of growing mushrooms, which is used as a soil amendment from Great Western Supply. He stated that it's not being held on the gravel pit property, but rather on his personal property south of mine site. Regarding trucks, the Applicant testified he's in transportation industry and in the business of complying with transportation regulations. He asserted that his trucks do not operate illegally. *Dan O'Neill Testimony.*
25. A Planning Staff site visit conducted in approximately April 2015 showed that the mine has been active since the last five-year review. However, Planning Staff determined through 2015 aerial photographs that the western boundary of the 25 acre mining site may have been breached. To correct that situation, Staff recommended that the Applicant move forward with special use permit 2007101506, proposing expansion into 45 additional acres. That permit application has been on hold for hydrogeological concerns. The Applicant has agreed to halt mining on the western boundary until the proposed expansion has been approved through a public hearing. If a breach has occurred, vegetative mitigation could be required to mitigate it. *Exhibit 1; Leah Davis Testimony.* Stating that a particular employee had perhaps been overzealous in clearing vegetation, the Applicant testified that no mining has occurred outside the approved mine boundary. There was a previous survey done in or before 2000 to establish the boundaries of the expanded mine and another survey is planned within two months of the hearing date addressing the breach and in support of the proposed expansion. *Dan O'Neill Testimony.*

26. When answering a question regarding what appears to be delayed or spotty compliance with such previously imposed requirements as adherence to the mine boundary, the repeated delay in obtaining five year review, and the delay in providing the noxious weed management plan required at the time of the 2000 mine expansion, Planning Staff submitted the opinion that these issues were "no big deal" because it is such a small mine, and the County received no complaints. *Leah Davis Testimony*.
27. After reviewing all application materials, together with agency and public comments up to the close of the hearing, Resource Stewardship Staff determined that, with conditions, the project is consistent with the Thurston County comprehensive plan, the county zoning ordinance, mineral extraction ordinance, and all other applicable policies and ordinances. *Exhibits 1; Leah Davis Testimony*.
28. While there are several items in the record identified as site plans, at time of hearing, there was no extant mine site plan depicting the various salient features of the approved mine site, include: the existing boundaries of the 25-acre approved mine area; the 100-foot buffer/setback; the location of and buffers associated with critical areas within the mine, which include protected Oregon White oaks and a stream if not others; at least approximate identification of areas where mining is completed and reclamation is underway, and areas of ongoing and future mining; and the location of the sediment pond and any structures or other permanent site features, such as equipment storage, fuel tank storage, etc. *Leah Davis Testimony; Amy Head Testimony; Dan O'Neill Testimony; February 19, 2016 Post Hearing Order*.
29. All previous approvals indicate that compliance with the approved site plan is required. Because this material oversight of previous proceedings required correction, the record held open for the Applicant to create and submit a new site plan, accurately depicting the items detailed in a February 19, 2016 post-hearing order. (Other items were required by that order as well.) In response, on March 3rd the Applicant submitted the site plan at Exhibit 6. That plan did not include any reference to the Type 5 stream or Oregon white oaks, and other items remained unexplained, including whether the 100-foot buffer required in the previous approvals was meant to be from the position of the mine site boundary, as opposed to the underlying property boundary, as explained in the Applicant's March 3rd cover letter. *Exhibit 6*. The record was reopened on March 8, 2016 to allow for further clarification by the County and the Applicant. *Order Reopening Record, March 8, 2016*.
30. After reviewing all previous approvals and the March 3rd site plan, County Staff determined that the Applicant's depiction of the 100-foot buffer was consistent with the requirement established in the more recent special use permit approval, the 2000 expansion of the mine area (SUPT 000337). However, Staff determined that the March 3rd submittal did not adequately depict and specify the required protective buffers around the critical areas. Staff submitted the position that the site plan should clearly show the line of the buffers and explicitly state the width of the buffers and that due to the absence of a specific buffer for the Oregon white oak, a buffer specifying the tree drip line should be added to the site plan. *Exhibit 8*.

31. The Applicant submitted a revised site plan on March 22, 2016. This plan contains adequate, if not generously detailed, depictions of the features listed in the February 19, 2016 Order, sufficient for use at a future five year review. *Exhibit 9.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to conduct the five-year review pursuant to TCC 2.06.010 and TCC 20.54.070(21)(e).

Criteria of Approval For Five Year Review

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.”

Conclusions Based on Findings

1. As conditioned, the record whole demonstrates that the mine can comply with all conditions of previous SUP approval and all mitigation measures of both MDNSs. Regarding Staff's assertion that incidents of noncompliance or delays in compliance are not significant, the undersigned urges caution on the part of both Staff and the Applicant going forward. The mineral extraction code does not hold smaller mines to less stringent standards or require less strict compliance with the conditions of previous approvals. Strict compliance with all previous conditions, as well as those imposed herein, should be anticipated to be required. *Findings 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 25, 26, 27, 28, 29, 30, and 31.*
2. There is a history of not obtaining timely five year review for the instant mining operation. In the case of the instant delay, the record suggests that the Resource Stewardship Staff decision to combine the required five year review process with review of a separate mine expansion proposal, as well as general staffing problems, contributed to the delay in this review which was due in October 2012. In order to facilitate timely five year review going forward, a condition of approval will require that the next five year review hearing be conducted prior to the anniversary date of the instant permit. The burden is on the Applicant to ensure timely review is performed. The next five year review application should be turned in far enough in advance that the hearing is able to be held by this deadline. *Findings 7, 8, 9, 10, 11, and 31.*

DECISION

Based on the foregoing findings and conclusions, the request for approval of a five-year review special use permit to authorize ongoing surface mining pursuant to previous approvals SUP 6-90, SUPT 97-1791, SUPT 000337, and SUP 2006104333 within the approved 25-acre gravel mine site within the 87.69-acre subject parcel is **APPROVED** subject to the following conditions:

- A. All mining activity must comply with all conditions established through SUP 6-90, SUPT 97-1791, SUPT 000337, and SUP 2006104333, as well as the required mitigation measures in the SEPA 6-90 MDNS and in the SEPA 000337 MDNS.
- B. The Applicant shall contact Thurston County Noxious Weed Department Staff within 30 days of the instant approval to coordinate inspections and implementation of the vegetation management plan in the record at Exhibit 1.V, as modified through ongoing consultation with the County Noxious Weed Department.
- C. The Applicant/owner shall review the Spill Prevention Control and Countermeasures (SPCC) plan each year and ensure that it continues to meet all requirements outlined in WAC 173-303-350.
- D. All conditions set forth in the April 29, 2015 memorandum from Thurston County Environmental Health Division (Exhibit 1.X) shall be satisfied.
- E. All vehicles leaving the site shall comply with RCW 46.61.655(3). Any vehicle operating on a paved public highway with a load of dirt, sand, or gravel susceptible to being dropped, spilled, leaked, or otherwise escaping therefrom shall be covered so as to prevent spillage. Covering of such loads is not required if six inches of freeboard is maintained within the bed.
- F. A survey shall be conducted within 60 days of February 16, 2016 to determine where the western parcel boundary is located. If it is found that current mining has breached the western boundary, all mining shall cease. If the proposed western expansion of the existing mine (reviewed as SUP 2007101506) is not approved, reclamation of the breach shall begin immediately and include a 100-foot buffer from the western boundary. Reclamation includes grading to match adjoining topography, allowing natural vegetation to take root, and planting seedlings like trees found in the area.
- G. If a crusher is to be used within the 10-acre original mine area, the Applicant must register with Olympic Regional Clean Air Agency prior to commencement of crushing activities. Any use of a crusher outside the original 10-acre area requires review and approval of an alteration to Condition U of SUPT 000337.
- H. All mine registration forms and fees shall be paid each year on time and all required inspections obtained consistent with TCC 17.20. The Applicant shall keep records that these requirements are satisfied for presentation at all future five year reviews.
- I. Although strict compliance with deadlines established in conditions of special use permit approval is expected, it has not been demonstrated in the past for this mine. (For example, there is no explanation in the record of the cause of the delay in compliance with the requirement of SUP 2006104333 to provide and implement a noxious weed management plan acceptable to the County Noxious Weed Department within 90 days of the 2007 approval.) Assuming such delays are unavoidable, they must be explained by adequate documentation in the record of future requests for approval.

- J. All development on-site shall be in substantial compliance with the approved site plan at Exhibit 9. Any expansion or alteration of the use will require approval of a new or amended special use permit. The Resource Stewardship Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
- K. 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 ensure that such review up to and including the public hearing has been conducted within the five year time period; this requirement shall be met by filing the five year review application up to one year ahead of the current five year review's expiration. The next five-year review hearing shall be held on or before April 5, 2021.

DECIDED April 5, 2016.



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$651.00** for a Request for Reconsideration or **\$866.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____
Appeal Sequence No.: _____

☐ Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

☐ Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
on this _____ day of _____, 20__, as an APPELLANT in the matter of a Hearing Examiner's decision
rendered on _____, 20__, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED

SIGNATURE OF APPELLANT

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of ☐ \$651.00 for Reconsideration or \$866.00 for Appeal. Received (check box): Initial _____ Receipt No. _____

Filed with the Resource Stewardship Department this _____ day of _____, 20__.

Q:\Planning\FORMS\Current Appeal Forms\2016.Appeal-Recon-form.he.doc