



COUNTY COMMISSIONERS

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. 2006104333
	)	
<b>Daniel C. O'Neill, O'Neill &amp; Sons</b>	)	FINDINGS, CONCLUSIONS AND
C.W. O'Neill Gravel Mine	)	DECISION
For a Five-Year Review.	)	

### SUMMARY OF DECISION

The five-year review of Special Use Permit No. SUPT 000337 is **APPROVED**, with conditions.

### SUMMARY OF RECORD

#### Request:

Daniel C. O'Neill of O'Neill & Sons (Applicant) requested five-year review of Special Use Permit No. SUPT 000337, which authorized the expansion of a gravel mine to a total of 25 acres. Condition J of SUPT 000337 requires Hearing Examiner review of the gravel mine 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 subject property is located at 4600 103<sup>rd</sup> Avenue SE in Thurston County, Washington (Tax Parcel Nos. 11721320100 and 11720410000).

#### Hearing Date:

An open record hearing on the request was held before the Hearing Examiner of Thurston County on October 15, 2007.

#### Testimony:

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

Tony Kantas, Development Services Department  
Sara Brallier, Environmental Health Department  
Nadine Romero, Public Health and Social Services Department  
Arthur Saint, Roads and Transportation Department  
Jean Carr, Applicant Representative  
Dan O'Neil, Applicant

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 Special Use Permit Application (5-year review)
- Attachment c Vicinity map
- Attachment d Site plan
- Attachment e October 5, 2006 memorandum from Jean Carr, Shea & Carr
- Attachment f October 5, 2006 letter from Jean Carr, Shea & Carr
- Attachment g October 5, 2006 letter from Candace Cramer, Shea & Carr
- Attachment h SUPT 000337 Hearing Examiner "Findings, Conclusions, and Decision," dated August 31, 2000.
- Attachment i SUPT 97-1791 Hearing Examiner "Findings, Conclusions, and Decision," dated January 28, 1998.
- Attachment j SUP-6-90 Hearing Examiner "Findings, Conclusions, and Decision," dated June 11, 1991
- Attachment k Mitigated Determination of Non-Significance dated July 18, 2000 (SEPA 000337).
- Attachment l Mitigated Determination of Non-Significance dated March 20, 1991 (SEPA 6-90).
- Attachment m December 4, 2006 Comment Letter from the Thurston County Noxious Weed Department.
- Attachment n July 25, 2007 Comment letter from the Health Department
- Attachment o September 14, 2007 Comment letter from the Roads Department

EXHIBIT 2 Enlarged Aerial Photo of Site

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 Special Use Permit No. SUPT 000337, which authorized the expansion of a gravel mine to a total of 25 acres. Condition J of SUPT 000337 mandated Hearing Examiner review of the gravel mine 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 subject property is located at 4600 103<sup>rd</sup> Avenue SE in Thurston County, Washington (Tax Parcel Nos. 11721320100 and 11720410000). *Exhibit 1, Staff Report, page 1; Exhibit 1, Attachments b, c, and h.*
2. The subject property is zoned Rural Residential/Resource – One Dwelling Unit per Five Acres (RRR 1/5), and is designed a Mineral Resource Land pursuant to Thurston County Code (TCC) 20.30B. Mineral extraction activities are allowed in the RRR 1/5 zone with approval of a special use permit. *Exhibit 1, Staff Report, page 2.*
3. Mining activities were first permitted on the site in 1991, through Special Use Permit No. SUP-06-90. The original permit authorized the development a 10-acre gravel mine, subject to a ten-year limitation on operations. At the five-year review of the original permit (SUP-97-1791), a Thurston County Hearing Examiner determined that the project complied with all conditions of SUP-06-90 and eliminated the ten-year time limit. The majority of the ten-acre site has been mined and reclaimed. *Exhibit 1, Attachments e, f, g, i, and j; Exhibit 1, Staff Report, page 2.*
4. The Applicant subsequently applied for a special use permit to expand the mine to 25 acres. This request was approved on August 31, 2000 through permit SUPT 000337. Condition J of SUPT 000337 required Hearing Examiner review of the gravel mine 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. *Exhibit 1, Attachment h.*
5. SUPT 000337 required the Applicant to obtain Department of Natural Resources (DNR) approval of a reclamation plan prior to mining within the expansion area. The Applicant obtained the DNR approval of a reclamation plan in May, 2006. Prior to that time the Applicant had not conducted any mining within the expansion area, except to remove some gravel for roads. *Exhibit 1, Attachments f, g, and h.*
6. SUPT 000337 was conditioned to require the Applicant to construct improvements to the intersection of Steadman Road and 103<sup>rd</sup> Avenue prior to mining the expansion area. The Applicant has completed the required improvements. *Exhibit 1, Attachments g and o.*
7. SUPT 00037 required the Applicant to comply with the conditions of a July 17, 2000 letter from the Public Health and Social Services Department. The Public Health and Social Services Department reviewed these conditions and determined that the project is in compliance. *Exhibit 1, Attachments h and n.*
8. SUPT 00037 and the Mitigated Determination of Nonsignificance (MDNS) issued in conjunction with that application required a 100-foot mining setback, a 25-foot stream buffer, and preservation of on-site Oregon White Oak. The mining operations have not

intruded into any setback or tree preservation areas. *Exhibit 1, Staff Report, pages 2 and 4; Exhibit 1, Attachments g, h, and k; Exhibit 2.*

9. The Applicant proposes to commence rock crushing activities on the site. Rock crushing was authorized on the original ten-acre site through SUP 6-90. *Exhibit 1, Staff Report, page 2; Exhibit 1, Attachment e.* The conditions of SUP 6-90 and the later approvals contain conditions requiring compliance with state noise standards. *Exhibit 1, Attachments i and j.*
10. Thurston County Development Services Department staff reviewed the mining operations against the conditions of the previous special use permits and determined that they are in compliance with the conditions. *Exhibit 1, Staff Report, page 4.* The Department staff, however, submitted that an additional condition relating to weed control is needed to minimize off-site impacts. The noxious weed “Knotweed” has been identified on a portion of the subject property. Knotweed, listed as a Class B noxious weed in Washington State, is identified as a species of mandatory control by the Thurston County Noxious Weed Control Board, with the special designation of “transportation rights-of-way and gravel mines.” Infestations within transportation rights-of-way and gravel mines pose the greatest threat for disturbance and further spread into un-infested areas. Thurston County Noxious Weed Control requested that a vegetation management plan be required as part of the gravel mine review process. *Exhibit 1, Attachment m.* Development Services Department staff recommended that the Applicant submit a noxious weed management plan to Noxious Weed Control within 90 days of the Hearing Examiner’s approval of the five-year review. *Exhibit 1, Staff Report, page 5.*
11. Thurston County evaluated the environmental impacts of the mine under the State Environmental Policy Act (SEPA) in conjunction with its review of SUP 6-90 and SUPT 000337. Staff has determined that the mining operations are in compliance with the conditions of both threshold determinations. The requested five-year review is exempt from SEPA review. *Exhibit 1, Staff Report, page 3; Exhibit 1, Attachments k and l.*
12. Notice of the open record hearing was mailed to property owners within 2,600 feet of the mine on October 2, 2007, published in *The Olympian* and *The Nisqually Valley News* on October 5, 2007, and posted on site on October 5, 2007. *Exhibit 1, Staff Report, page 3; Exhibit 1, Attachment a.* There was no public comment on the five-year review. *Exhibit 1, Staff Report, page 4.*

## 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.”

Conclusions Based on Findings:

1. The gravel mine satisfies the conditions established in SUPT 000337. *Findings Nos. 5-11.*
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 use will satisfy the standards of the special use chapter of the Thurston County Code. *Finding No. 10.*

**DECISION**

Based upon the preceding Findings and Conclusions, the request for five-year review of SUPT 000337 is **GRANTED**, subject to the following conditions:

- A. All mining activity must continue and remain in compliance with the conditions established through SUP 6-90 (Exhibit 1, Attachment j), SUPT 97-1791 (Exhibit 1, Attachment i) and SUPT 000337 (Exhibit 1, Attachment h).
- B. 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 noxious weed management plan shall be submitted to the Thurston County Noxious Weed Control Department within 90 days of Hearing Examiner approval of the five-year review.
- C. 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.
- D. 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 has been within the five year time period. (The next five-year review is scheduled for 2011).

Decided this 1<sup>st</sup> day of November 2007.

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James M. Driscoll  
Thurston County Hearing Examiner