

**OFFICE OF THE HEARING EXAMINER**

**THURSTON COUNTY**

**REPORT AND DECISION**

**PROJECT NO.:** 2004104093 and 2017101201  
Quality Rock Grand Mound

**FOLDER NO.:** 04 113074 ZM and 17 103093 ZM

**TAX PARCEL NOS.:** 55801100000, 55801500000, 55802100000,  
55802300000, and 13511220300

**LOCATION:** 6802-196<sup>th</sup> Avenue S.W., Rochester, WA

**APPLICANTS:** Quality Rock Products, Inc.  
4201 Snake River Avenue  
Lewiston, ID 83501

**REPRESENTATIVE:** Gardner Bay Consulting, LLC  
Attn: Peter Battuello  
1228 Grand Avenue  
Everett, WA 98201

**PLANNER:** Robert Smith, Senior Planner

**SUMMARY OF REQUEST:**

Five Year Review approval of a Special Use Permit (case SUP 93-017) for a gravel mine, approved by the Thurston County Hearing Examiner on February 17, 1997, along with expansion of the mine into an area known as Phase 3B; and an amendment to the Special Use Permit to reduce the required, 100 foot setback from exterior property lines in several portions of the mine. The amendment will recognize mining areas within the setback at the time of the expansion application approval in 1997 and areas mined into the setback after approval of the expanded mine. No new expansion into the 100 foot setback area is proposed.

**SUMMARY OF DECISION:** Request granted, subject to conditions.

**DATE OF DECISION:** August 31, 2017

## **PUBLIC HEARING:**

After reviewing the Resource Stewardship Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on August 22, 2017, at 10:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1" - Resource Stewardship Planning & Environmental Section Report**
- Att. A - Notice of Public Hearing**
- Att. B - Zoning/Site Map**
- Att. C - Master Application**
- Att. D - Special Use Permit Application**
- Att. E - Special Use Permit Application (Original 5-Year Review)**
- Att. F - Operations Plan**
- Att. G - Planting and Irrigation Summary**
- Att. H - Applicant's Narrative Regarding Amendment Request**
- Att. I - Applicants Response to Neighbor Comments/Concerns**
- Att. J - Notice of Application**
- Att. K - Complete Application Letter**
- Att. L - SEPA MDNS for Original Special Use Permit Application**
- Att. M - Report and Decision dated February 17, 1997**
- Att. N - Comment from Thurston County Public Health**
- Att. O - Comment from Thurston County Public Works**
- Att. P - Email from Thurston County Hydrogeologist**
- Att. Q - Comment from WSDOE**
- Att. R - Comment from Nisqually Indian Tribe**
- Att. S - Public Comments**
- Att. H-1 - Colored Site Plan**
- Att. T - Innovex Technical Memorandum**
- Att. U - Hydrogeologic Update and Groundwater Monitoring Plan**
- Att. V - Gardner Bay Consulting Letter dated February 15, 2017**
- Att. W - Gardner Bay Consulting Letter dated May 28, 2017**
- Att. X - Revised Narrative**
- Att. Y - Letter from David J. Ward dated March 20, 2008**
- Att. Z - Reid Wall Email dated August 18, 2017**
- Att. AA - Kevin Hughes email dated August 21, 2017**
- Att. BB - Photograph of Public Notice Posting**
- EXHIBIT "2" - Letter from Heather Burgess dated August 22, 2017**
- EXHIBIT "3" - Submittal from Gardner Bay Consulting, LLC**

## **EXHIBIT "4" - Power Point Presentation**

**The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.**

ROBERT SMITH appeared, presented the Thurston County Resource Stewardship Planning and Environmental Section Staff Report, and introduced Attachments T-BB to the Staff Report. He testified that we have two applications for the same mine. Application 093 is for the five year review that also includes the commencement of mining below the water table. Case 074 requests an amendment to the special use permit that will recognize existing mining intrusions into the required, 100 foot wide setback. The mine is located in the Grand Mound area west of I-5 in the Light Industrial and Rural Resource zone classifications. Both zones allow mining subject to acquisition of a special use permit. The mine has an approved conditional use permit. Mining has occurred across the entire parcel and some areas are 20 to 30 feet below the natural grade. Other mines are in the area to include three active mines to the east and one inactive mine to the south. Staff has assessed whether the applicant has complied with previous conditions or whether the setback violations since 1997 be considered violations. He has listed the 1997 conditions, many of which are satisfied, but others are ongoing. The County reviewed the permit and noted three conditions needing review: the perimeter landscaping requirement; commencement of mining in Phase 3B, specifically below the water table; and setback encroachments. Staff determined that the applicant did construct a berm and planted the berm, but the plantings failed. They then replanted the berms this past winter, and as of May, all are alive. At the time of this hearing the site is in compliance with the landscaping requirements. In 1997 the mining showed a phased plan and Phase 3B would consist of mining below the water table. The original conditions required review before below groundwater mining occurred, and we must consider whether or not the mine is in compliance with all conditions. Also, we look to the impacts to the groundwater and drinking water wells in the area. The applicant submitted a Hydrogeologic Assessment that was reviewed by the County hydrogeologist. The assessment includes monitoring wells for water quality and quantity, and they have noted no negative impacts in surrounding wells and the County agrees. Therefore, the County recommends approval of the Phase B mining. Concerning reduction of setbacks, in 1993 when the original application was submitted, the mine was a grandfathered use. The intrusions had already occurred and the amendment will recognize the previous incursions. In 1997 the Hearing Examiner required a 100 foot wide buffer, but made no provision for incursions. The proposed amendment will allow for such to occur. The code allows a reduced setback if the intent of the code is met due to the topography or uses on surrounding properties. The berm and the lowered mine level abates noise to an acceptable level, and therefore staff concurs with the amendments to reduce the setbacks.

DAWN PEEBLES, Thurston County Environmental Health, appeared and testified that the health department conditions are included and therefore she recommends approval.

KEVIN HANSEN, County hydrologist, appeared and testified that he had two concerns regarding the hydrology and the aquifer. He noticed that slopes in the north portion of the mine within the 100 foot setback were over-steepened and could create a danger to the abutting County road. He was assured by the geotechnical engineer that reclamation of the slopes will address his concerns. Next, it is a big job to expand the mine below the groundwater. Concerning groundwater quality, the applicant has installed two wells upgrade and one well downgrade to establish the direction of the flow. The majority of the downstream wells were after the fact, so owners installed the new wells. He has no concern with the overall plan. He recommends that machine shop work be accomplished offsite and that no such activities occur onsite. The monitoring is in place and is working. A pollution plume, depending on the nature of pollution, would travel a few hundred feet per year through the ground, and if there were simply an illegal dump, it probably would not affect nearby wells.

HEATHER BURGESS, attorney at law, appeared on behalf of the applicant and introduced Exhibits 2-4. She then called PETER BATTUELLO, a licensed geologist and hydrogeologist, as a witness. Mr. Battuello testified that no mechanical work occurs on the site, but they do have a maintenance bay for minor maintenance such as belt and tire changes. The amount of chemicals they use on the site is very small. The applicant is very concerned about petroleum releases and they have above ground storage tanks. Three monitoring wells exist on the site, one is up gradient from the mine. They can evaluate wells on and off the site and they also maintain an irrigation well 40 feet offsite. The nearest well is 400 feet away and is monitored. The Grandview Estates well is sampled and monitored. They sampled in 1988, 2002, 2008, 2013, and 2017. Each well showed no adverse impacts. They are also concerned about trespassing and the possibilities of theft, illegal dumping, and ATV riding. They have fenced and locked the premises and people are there during the day. They have security measures in place. DOE and the County opted to establish the background water quality prior to commencement of mining by monitoring once per month for the first six months. The steep slopes are at the north end and DNR also noted them and is working with them now for reduction. They were working on the reduction when they became aware of the conflict in the setback. The requirements of the RCW and the County conflict, and they will align the setbacks to the present boundary of the mine.

In questioning by Mr. Hansen, MR. BATTUELLO testified that they do have a proposal to change the mining program in future years. The monitoring wells need to be at a specific depth, and some will need to be deepened. They will monitor wells across the site. Three nearby wells are between 100 and 110 feet in depth. One well is 100 feet. The single-family wells in the area are between 60 to 80 feet in depth.

In questioning by Ms. Burgess, MR. BATTUELLO testified that the mining changes are included in the plan and are coordinated with the County. They resubmitted their plan to address Mr. Hansen's comments and obtained approval from him. They have a number of options if they see something different in the monitoring. Mr. Battuello then recommenced

his testimony by introducing the power point and discussing the five year review. The setback violations were due to a miscommunication between DNR and the County. In 2011 a key change of ownership occurred when the present applicants assumed control with a new management team. They have addressed existing problems and have worked on compliance with conditions since 2012. They eliminated the asphalt plant and have conducted no active mining on the site since 2012, but they are selling previously mined products from the site. A letter from the Hearing Examiner in 1997 sets forth the purpose of the five year review. In 2008 they made a request for a five year review and now a more recent request. Area 3B is presently mined to the top of the water table. They need an inspection to commence mining. They will wet mine until they reach the south end. They will create a 50 acre lake and build homes around it per the residential zone. He then referred to a map of the area and noted that the orange color denotes other mines, and the yellow color their site. They will have no impact on well water. They have been inactive since 2011 except for the occasional loading of trucks. Several other mines are active. They are in compliance with their special use permit and have performed noise monitoring since 2012, when they were not required to do further monitoring. They will do noise monitoring again per code due to the expanded operation and access roads. He does not know why the setback incursions occurred. They will reduce slopes in the fall to preserve the top soil piles and reduce the slopes. DNR did not want to lose top soil due to the slopes. They need an access road between ten and 30 feet from the property line, but the large berm and depth of the road will ensure that they do not create noise and dust impacts. A road with only a 100 foot separation at grade would create substantially more noise. The topographic difference and berm meet the intent of the code. They propose locating only the north-south road within the setback and no additional mining will occur. The County and DNR have approved roads to the edge of the setback for access. Concerning the colored slide introduced as Exhibit H-1, the orange represents the setbacks restored between 2002 and 2009, and the yellow represents the setback in place at the time of approval of the special use permit. In the blue area they are working with DNR and are preparing a reclamation plan. The green berm area is the subject of today's hearing. Approval will allow mining to continue. They also request a setback between 60 feet and 100 feet along Sargent Road. No mining will occur within either reduced buffer area. On the west side the berm will measure between 70 and 100 feet. The north-south green direction will measure 100 feet, and the north-south road will be within the buffer.

MARK McKAMEY appeared and testified that he came in as mine director with the new owner. The site was shut down in 2012 and mothballed. They attempted to obtain a five year review at that time. It is hard to estimate the amount of truck traffic, but they anticipate five to 20 trips per day. Since 2012 and 2013 they have had about 20 to 30 loads per day. From 2013 to the present they have had between zero and six loads.

MIKE PARSONS appeared and testified that he is the chair of the Black Hole Reserve in Thurston County and has a vested interest in the outcome. They are currently in three locations and are the largest family owned mining operation. They will serve as the operator of the mine, and he is a life long resident of Thurston County. At present 94 percent of the aggregate mined here is purchased by customers located outside of

Thurston County. They are aggressively trying to find a niche and have been in business since the early 1990s. They came here in 2015. They have purchased other mines and brought them back into operation. They have employed 30 new workers since early 2017 and will employ another 15 for this market. The history of this mine shows a lot of corporate operation from outside of the County. Now they have replaced corporations with an in-County family. They want to keep the revenue here. They can meet with their neighbors and assure them that they will do it right.

LARRY DICKERSON appeared and testified that he has resided in the area for the past 60 years, and that his property is in a gravel area as well. He has a drinking water well and a big issue in Washington now is water. One question is whether they share the results of their well testing with the residents. If he has an issue with his water or with noise, who is he to call? He plans to test his water at present. Why should we reduce the setback from 100 feet? There is no need to provide more room to mine. What happened to the gopher inspection requirement? Since the mine has not been used since 2011, do they now fall under the inspection requirement? If this company operates other mines, have they worked with the communities in those other areas? He has seen other mines covered with cars and appliances. People will dump on the site. They need to advise the neighbors of the results of the testing. Noise and traffic are also an issue. People travel fast along the roads, and he is concerned about a road collapse due to the over-steepened slopes.

MIKE FOSTER appeared and testified that he resides on the south side of the mine and questioned how long the mining will occur. He looks forward to being a waterfront property owner. He moved here in 2011 and doesn't remember much noise. He has no problems with dust. If the applicant keeps the road low, it will provide good mitigation. He believes they will try to be a good neighbor and he will also test his well next week.

ARIAL HALL appeared and testified that she lives several blocks away from the pit and hears the mine. Some of the noises are extremely intrusive. Noise at night is not appropriate. She has to close her windows and has done that since 2009. The noise often occurs in mid-summer. She does not know what causes the noise. During the daytime she hears noise, but it creates no problem. She would like to have a copy of the well monitoring results. The monitoring should occur more often than two times per year.

MR. BATTUELLO reappeared and testified that they do share all of their well testing results with the Rochester Water Company to include results from individual wells. Rochester shares its testing with them as well and the information is available to residents. If they have a specific list, they can provide copies. Slope stability is also one of their concerns. They are limited as to slope steepness within the water table and will comply with all requirements. If people have a problem with water, many agencies are available for help to include DOE, DOH, the County, or the mine operator. The County controls the permit and monitoring. They have drilled two new wells and will drill one more. Extraction occurs using a drag line process that consists of dragging a weighted bucket along the bottom beneath the surface of the water and scooping up the gravel. The water is all confined to the pit. The County looked at the gopher issue, but no habitat is present. They will not

disturb existing habitat. He is not familiar with Lewis County's zoning or the reclamation plan for the lake in the mine near Chehalis. However, this mine has a very clear plan. He believes that the noise and traffic located within the mine itself will create less noise than an unbuffered, 100 foot setback. They prepared a TIA in 2002 and there has been no aggressive change in the area from the original approval. Active, aggregate areas are adjacent to their mine. They will operate from 7:00 to 7:00, Monday through Friday, shorter hours on Saturday, and no work on Sunday. They are not permitted to do night work, but if they have State projects, they would need to obtain County approval and provide notice to their neighbors before commencing night work.

MS. BURGESS reappeared and testified that the setback reduction analysis is contained in Attachment H to the Staff Report. They do not oppose noise monitoring. All impacts of Phase 3 were previously considered when Phase 3 was approved. They meet all conditions and can proceed. They are not expanding their special use permit and are not asking for additional uses. Dust and dirt are regulated by the Clean Air Agency which requires a separate permit and has its own regulations. DNR chose the reclamation plan and the County must also approve it. The County can verify compliance with conditions of approval.

MR. SMITH reappeared and testified that Ms. Hall should call the County's compliance section and advise of what she hears, when she hears it, and where the noise occurs. Water issues can be addressed to the environmental health department. Anyone can call and obtain information regarding the ongoing monitoring. The gopher was listed as a threatened species in 2014 and the special use permit predates the listing, but even so, County staff evaluated the site and found all top soil removed. Therefore, the mine will not impact habitat and no review is required. Dumping is addressed by the fence and locked gate. The site is secure.

MS. PEEBLES reappeared and testified that noise and water concerns can be directed to environmental health.

MR. HANSEN wanted clarification as to how water issues are addressed.

MR. BATTUELLO responded that Attachment U sets forth a contingency plan and matrix that includes responses. They can also increase sampling to evaluate impacts. They previously test once every five years, but now need a hydrogeologist to review the testing and reports. They will submit testing on a regular basis, and if they don't, the County should request the test results. They will also provide the six month sampling.

MR. HANSEN responded by testifying that he is fine with a licensed hydrogeologist on retainer to supervise the testing.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 11:30 a.m.

**NOTE:** A complete record of this hearing is available in the office of the Thurston County Resource Stewardship Department.

**FINDINGS, CONCLUSIONS, AND DECISION:**

**FINDINGS:**

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. A Mitigated Determination of Non Significance (Attachment I) associated with Special Use Permit, SUP 93-017, was issued on October 29, 1996, following review pursuant to the State Environmental Policy Act (SEPA).
3. Written notice of the public hearing was sent to all parties of record on August 9, 2017. Notice of the public hearing was published in The Olympian on August 11, 2017, at least ten (10) days prior to the hearing. Notice was posted on site on August 10, 2017.
4. The applicant, Quality Rock Products, Inc., has a possessory ownership interest in an irregularly shaped, 78 acre parcel of property located at the southwest quadrant of the intersection of 191<sup>st</sup> Avenue S.W. and Sargent Road S.W., west of Interstate 5 in the Rochester/Grand Mound area of unincorporated Thurston County. The parcel abuts 191<sup>st</sup> Avenue S.W. for 820 linear feet and Sargent Road for 1,570 linear feet. The parcel measures 2,480 linear feet in a north-south orientation. Previous owners established a gravel mine on 24 acres of the parcel in the 1980s that was expanded to 78 acres in 1997 pursuant to a special use permit approved by the Thurston County Hearing Examiner (SUP 93-017).
5. According to the 1997 Examiner's Decision, the applicant at that time, Cascade Sand and Gravel, anticipated that the mine would yield 7.1 million cubic yards of material and that it would continue to mine at a rate of 50,000 cubic yards per year. Cascade proposed to mine the site in phases with Phases 1 through 3A occurring above the water table and Phases 3B-7 below the water table. Accessory uses on the mine parcel included gravel washing, gravel sorting, gravel crushing, and transport of mined aggregate. Conditions of approval required perimeter berms, fencing and landscaping, and berms around noise producing machinery. The applicant proposed above-ground storage of diesel fuel on a cement pad with curbs and cleanup materials onsite to include absorption materials and pumps. The applicant anticipated eight to ten gravel trucks entering and leaving the site each day. Due to a dispute between the Washington State Department of Natural Resources (DNR) and Cascade as to the intent of Condition E3, the Examiner issued a clarifying letter dated April 11, 1997. Said letter provided that below water mining could occur in accordance with the following:



Expansion in area 3B shall be authorized only if the applicant can demonstrate compliance with conditions of approval of this Special Use Permit. (Tab A to Exhibit 2)

Thus, to commence mining below the water table, the applicant must show that the mine is in compliance with all conditions of approval imposed in the 1991 Decision.

6. Section 20.54.070(21)(e) of the Thurston County Code (TCC) requires a review of approved mineral extraction permits every five years. The present applicant requests the mandatory five year review. Section 17.20.230 TCC prohibits extraction from occurring closer than 100 feet from an exterior property boundary. Previous owners intruded into the 100 foot setback in many areas of the mine, and the applicant is requesting a setback adjustment to authorize the previous incursions. However, the applicant proposes no new mining activities within the 100 foot setback areas. Approval of the reduced setbacks would bring the mine into compliance with the original conditions of approval and with TCC 17.20.030. Finally, the applicant desires confirmation that the landscaping installed in the winter of 2016-2017 (and presently surviving) satisfies the landscaping requirements of the special use permit. Thus, the applicant requests approval of the five year review, reduction of the setbacks, and confirmation of compliance with all conditions of approval of SUP 93-017. Said approvals would authorize expansion of the mine into Phase 3B and allow mining below the water table.

#### Adjustment/Reduction of Exterior Setbacks and Five Year Review

7. As found above previous owners extracted material from areas of the mine a minimum of 15 feet from exterior property lines. Exhibit H-1, a colored rendition of the site plan, shows the encroachments and describes the applicant's request to reduce the 100 foot wide setback. The requests are as follows:
  - A. Along the northern half of the west property line, amend the setback to between 70 and 100 feet. The applicant is presently working with DNR to restore and reclaim portions of the setback area.
  - B. Retain the 15 foot wide, minimum setback along the southern half of the west property line to accommodate a haul road constructed within said area. The haul road is 15 to 20 feet below grade and the applicant has constructed a berm along the property line. Thus, abutting and nearby properties should experience no dust or noise impacts from trucks utilizing the haul road.
  - C. Amend the setback to between 70 and 100 feet along the west portion of the south property line. Again, a below grade haul road exists in the area.

- D. Amend the setback abutting most of Sargent Road to between 60 and 100 feet.
- E. Restore the setback adjacent to 191<sup>st</sup> Street Avenue in accordance with DNR reclamation requirements.

All impacts of the reduced setbacks on adjacent properties are eliminated by the below grade area created by previous extraction and by the berm established around the entire perimeter of the mine. Abutting parcels should not experience noise or dust impacts. Conditions of approval require a noise monitoring plan for the first six months of mining activities and the Clear Air Agency will assure compliance with dust standards. Again, the mine haul roads 12 and 20 feet below the grade of adjoining properties together with the berm create a significantly greater noise/dust protection, than a 100 foot wide separation.

- 8. A summary of the adjusted setbacks is set forth on Table 1 of Exhibit H. The applicant has shown that the request to adjust the setbacks to reflect extraction by previous owners does not compromise and in fact improves the buffering and screening contemplated by the 100 foot wide setback. The request to reduce setbacks therefore meets the criteria set forth in TCC 17.20.230 due to the topography and berms. Since the applicant has shown that it is appropriate to reduce the 100 foot wide buffer as requested, the mine is now in compliance with the setback requirements of SUP 93-017 and the TCC.
- 9. The applicant must also show that the mine complies with the landscaping requirements of Condition 1E of the 1997 Examiner's Decision that includes a landscape berm "devoted entirely to the planting, cultivation and maintenance of sight-obscuring trees, shrubs, and plants", and that "the buffer shall be maintained so long as the special use is located on the site". Previous berm plantings failed due to either planting in the improper season or lack of irrigation. The applicant recently replanted the berm during the winter season and has provided irrigation for the summer drought season. As a result, staff's inspection of the site confirms that the landscape plants have survived and that the applicant is now in compliance with Condition 1E. Staff finds that the applicant is also in compliance with all other conditions imposed in the 1997 Decision to include mitigating measures in the MDNS. Therefore, the five year review should be approved subject to compliance with conditions of approval imposed hereinafter.

#### Expansion into Phase 3B

- 10. While the conditions imposed in SUP 93-017 require only that the applicant show compliance with conditions of approval before commencement of mining below the water table, Thurston County has required that the applicant also show that such mining will not adversely impact adjacent, drinking water wells. The applicant engaged Gardner Bay Consulting, LLC, and specifically Peter Battuello, an

imminently qualified geologist and hydrogeologist, to assess the impacts of the below water table mining. Mr. Battuello submitted a Hydrogeologic Update and Groundwater Monitoring Program dated April 20, 2017, as well as clarifying/supplementary letters dated February 15, 2017, and May 28, 2017. Mr. Battuello also developed a groundwater quality monitoring system that requires monitoring exclusively by qualified staff under the direction of a licensed hydrogeologist knowledgeable in the field. The applicant proposes to monitor its existing well and two new wells that will allow sampling of both the above and down gradient areas of the mine. In addition, subject to owner agreement, the applicant will monitor the wells of Grandview Valley Estates, Hoss Sports Complex, and Polmateer/Seven Cedars. Mr. Battuello opines that mining activities below the water table will have no adverse impacts on the water quality or quantity of any wells in the area. Furthermore, Mr. Kevin Hansen, Thurston County hydrogeologist, reviewed all of Mr. Battuello's submittals, provided comments thereon, reviewed Mr. Battuello's responses, and examined Mr. Battuello at the hearing. At the conclusion of the hearing Mr. Hansen testified that he agrees with Mr. Battuello's opinions and the proposed groundwater monitoring program since a licensed hydrogeologist will be responsible for assuring compliance. No expert testimony or written challenges to either Mr. Battuello's studies or Mr. Hansen's review thereof was submitted.

11. A nearby landowner, Kaufman Construction and Development, Inc., expressed concerns regarding the impacts of increased truck traffic to the surrounding road system and specifically to the intersection of Old Highway 99 and Highway 12. The applicant proposes no increase in truck traffic to that previously evaluated in the SEPA MDNS. The applicant also proposes no increase in mining activity, and has already generated some traffic during removal of previously mined aggregate from the mine. Furthermore, the intersection of Old Highway 99 and Highway 12 is within the jurisdiction of the Washington State Department of Transportation (WSDOT) and not Thurston County. WSDOT has not required any road improvements.
12. Residents attending the hearing expressed concern regarding existing noise within the area. Residents testified that the noise might be coming from the existing mine. However, the applicant testified and staff confirmed that no mining has occurred on the site since 2012, and that other mines or uses in the area may generate the noise. As found in the 1997 Hearing Examiner Decision: "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". Thus, existing noise is likely generated by other uses in the area.
13. The mine is located within the Rural Residential Resource-One Dwelling Unit per Five Acres (RRR 1/5) and the Light Industrial (LI) zone classifications of the TCC. The eastern portions of the mine located within the LI classification are also within the Grand Mound Urban Growth Area. Mineral extraction activities are allowed in both zone classifications subject to acquisition of a special use permit. The underlying property is also mapped with soil types that provide native prairie habitat and habitat for certain protected species to include the Mazama pocket gopher.

However, all top soil has been removed from the mine site and therefore no potential habitat remains.

14. While the applicant has already obtained a special use permit for the mine, the expansion into Phase 3B and continued operation of the mine also meets all criteria for a special use permit as set forth in Chapter 20.54 TCC as follows:
  - A. The proposed use complies with the Thurston County Comprehensive Plan and all Federal, State, Regional, and Thurston County laws or plans. The applicant remains in compliance with conditions of approval as amended herein.
  - B. The mineral extraction use complies with the general purpose and intent and all bulk regulations of both zone classifications.
  - C. The special use is appropriate in its present location. Mineral extraction has occurred on the site since at least the early 1980s and the 1997 special use permit approved mining below the water table. Staff has not identified any undue, adverse impacts to adjacent properties due to the operation of the mine. Finally, existing utilities serving the area are adequate to serve the mine.

#### **CONCLUSIONS:**

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the request for a Five Year Review approval to allow expansion of the mine into Phase 3B below the water table and to adjust setbacks to reflect historic and current conditions meet all criteria set forth in the TCC and are consistent with conditions of approval of the previously issued special use permit (SUP 93-017). The mine is now in compliance with all conditions of approval set forth in SUP 93-017, and therefore all requests should be granted subject to the following conditions:
  - A. Operation of the gravel extraction business shall comply with requirements of the Thurston County Public Health and Social Services Department, Public Works Department, Fire Marshal and Thurston County Resource Stewardship Department.
  - B. On April 8, 2014, the U.S. fish and Wildlife Service listed the Mazama Pocket Gopher under the Endangered Species Act. This property is mapped with Nisqually soils. These soil types can be habitat for the gopher. Review of the site did not find suitable habitat as a result of past mining activities.

However, if gophers are subsequently found on the mine site the Applicant or operator shall contact U.S. Fish and Wildlife for consultation.

- C. The mining operation shall be conducted in full compliance with the Thurston County Mineral Extraction Code (TCC 17.20).
- D. The Applicant shall stop work and contact the proper authorities, including Nisqually Tribe Preservation Officer, Jackie Wall (360) 456-5221, if during excavation there are discoveries of archaeological artifacts or human burials.
- E. The landscaping of the perimeter berm shall be maintained so that the plantings survive to provide the required site screening. The landscape buffer shall be maintained so long as the special use is located on the site.
- F. If contamination is currently known or suspected during mining operations, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, The Washington State Department of Ecology must be notified (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300).
- G. On-going water quality monitoring shall comply with the Hydrogeologic Update and Groundwater Monitoring Program Plan (Gardner Bay Consulting LLC, April 20, 2017).
- H. The approved Special Use Permit shall be reviewed by the Hearings Examiner no less frequently than every five years from the date of this decision. At the time of each review, the Examiner may impose additional conditions upon the operation if it is determined that it is necessary to do so to meet the County's mineral extractions standards and/or criteria for issuance of this Special Use Permit.
- I. Hours of operation shall be limited to 7 a.m. to 7 p.m., Monday through Saturday.
- J. The site shall be maintained in a neat and orderly manner at all times.
- K. Any expansion or alteration of this 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 Hearings Examiner Approval.
- L. All buffer dimensions and setbacks shall be measured from existing property lines or public rights-of-way, whichever is more restrictive.

- M. All conditions of the Mitigated Determination of Nonsignificance – including those related to noise control, dust control, protection of water quality and mitigation of traffic impacts – except as amended by this decision – shall be complied with by the applicant in order to continue the proposed operations.
- N. The following Health related conditions:
1. There shall be no further mining activities within 100 feet of the property boundaries.
  2. Within the first six months of commencing mining activities, the applicant must submit an updated noise monitoring plan. The noise monitoring plan must meet the parameters of the Mineral Extraction Ordinance, Chapter 17.20.110. Mineral extraction and asphalt plant activity within the residential zoning districts of the county shall be considered a Class "A" EDNA pursuant to WAC 173-60-030 (2), the state noise standards. If noise levels exceed the levels permitted by WAC 173-60, the Thurston County Health Department or Thurston County Resource Stewardship Department may take any enforcement measures necessary to ensure compliance with WAC 173-60.
  3. Records on file indicate there is an existing well located on Tax Parcel 55801500000 that previously served an office and rental house. The applicant must work with Department of Ecology to ensure this well is not a potential source of contamination or has been properly decommissioned.
- O. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of this use beyond that initially approved by the Hearing Examiner 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.
- P. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
- Q. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals

granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

**DECISION:**

The request for approval of a Five Year Review; to allow expansion of mine extraction activities into Phase 3B (below the groundwater level); and to reduce setbacks from extraction activities to reflect historic and current conditions is hereby granted for the Quality Rock Products, Inc., mine located at 6802-196<sup>th</sup> Avenue S.W., Rochester, subject to the conditions contained in the conclusions above.

**ORDERED** this 31st day of August, 2017.

  
\_\_\_\_\_  
**STEPHEN K. CAUSSEAU, JR.**  
Hearing Examiner

**TRANSMITTED** this    day of August, 2017, to the following:

**APPLICANTS:**                      Quality Rock Products, Inc.  
   4201 Snake River Avenue  
   Lewiston, ID 83501

**REPRESENTATIVE:**            Gardner Bay Consulting, LLC  
   Attn: Peter Battuello  
   1228 Grand Avenue  
   Everett, WA 98201

**OTHERS:**

THURSTON COUNTY





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

<b>NOTE:</b> 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 **\$669.00** for a Request for Reconsideration or **\$890.00** 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 ☐ \$669.00 for Reconsideration or \$890.00 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