



200305200112

Skagit County Auditor

5/20/2003 Page

1 of

8 10:48AM

AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON SPECIAL USE PERMIT SU 02 0686

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: CONCRETE NORWEST (BUTLER PIT)

ASSESSOR PARCEL NO: P119521

LEGAL DESCRIPTION: The proposal is located on Kelleher Road Washington within a portion of Section 16, Township 39 N, Range 4 East W.M. Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Concrete Nor'west
Miles Sand and Gravel, Inc.
P. O. Box 280
Mount Vernon, WA 98273

File No: PL02-0686

Request: Special Use Permit

Location: Adjacent to the existing Butler pit, on Kelleher Road
within a portion of Sec. 16, T39N, R4E, W.M.

Land Use Designation: Rural Resource-NRL with Mineral Resource Overlay

Summary of Proposal: To continue mining on a seven-acre site where the
Department of Natural Resources has already mined
to about a foot above the water table. The new mining will
excavate to about 71 feet below the water table, enlarging
the lake made at the adjoining Butler pit. The proposed
time line is about two years.

Public Hearing: After reviewing the report of the Planning and Permit
Center, the Hearing Examiner conducted a public hearing
on April 23, 2003.

Decision: The application is approved, subject to conditions.



FINDINGS OF FACT

1. Concrete Nor'west (applicant) seeks a Special Use Permit to continued mining an existing mining site adjoining the company's Butler pit. Concrete Nor'west is a division of the Miles Sand and Gravel Company.
2. The project is located on a seven-acre parcel located on Kelleher Road about two miles east of Old Highway 99, within a portion of Sec. 16, T39N, R4E, W.M.
3. The property is designated Rural Resource-NRL by the Comprehensive Plan and associated zoning map, adopted July 24, 2000. It is within a Mineral Resource Overlay (MRO) district.
4. The seven-acre project site was purchased by the applicant from the Washington State Department of Natural Resources (DNR) in August of 2002. The DNR had operated the site under SPU93-025 and had initially planned to mine there until 2014. However, they completed their permitted mining prior to the sale.
5. Gravel at the site is now about one foot above the water table. The applicant proposes to continue excavation, lowering the pit floor approximately 71 feet below the water table. An additional 280,000 cubic yards of material is to be removed in an approximate time period of two years (2003-2005).
6. The effect of the additional mining will be to enlarge the pit that has been dug at the applicant's adjacent Butler pit located to the north and west. Mining at the Butler site has been going on for about 60 years. Excavation of the Butler Mine is now approaching completion. The additional mining contemplated here will, in effect, slightly extend the life of the Butler Mine
7. No blasting will occur and no trucks will leave the project site. The materials mined will be transported by conveyor belt to the Butler pit property where they will be processed and sold.
8. The new Special Use Permit is sought because the requested below-water-table mining will be beyond the operational limits of SPU93-025. But, the horizontal extent of the mining identified in SPU93-025 will not change.
9. The pit created will be sloped downhill to the west away from Kelleher Road. The setback will be 50 feet from the Kelleher Road right-of-way. No setback is required where the project adjoins the neighboring mine. Elsewhere, the setback will be 100 feet from the property boundaries.



10. A large berm exists along the southeast portion of the project site where it borders Kelleher Road. All access from Kelleher Road has been blocked. The berm screens the mining activity from public view.

11. The 50-foot setback from Kelleher Road was administratively approved on March 13, 2003, pursuant to SCC 14.16.810(8)(b). The road itself will provide an additional buffer from adjacent agricultural lands. The standard buffer for mineral extraction operations is 100 feet. Staff found that no negative impacts to resource lands will result from the buffer reduction. See SCC 14.16.440(10)(b)(iii).

12. The additional mining will be accomplished by use of a floating dredge that will be access the site from the submerged area adjacent. No internal roadway system will be needed. No additional truck trips will be generated. No parking will be required. The only employee regularly on the site will be the dredge operator. No new improvements for the property are proposed.

13. As noted, the Butler Mine lies to the north and west. To the south across Kelleher Road is undeveloped agricultural property owned by DNR. Directly to the east is also agricultural land. Some distance to the north is the Valley View Estates Subdivision, located above the F and S Grade Road. Beyond the Butler pit to the west are a Skagit County pit and the Avalon Golf Course. Nearly all of the property south of Kelleher Road is zoned Agriculture-NRL. This land is very sparsely developed.

14. Operations will be carried on Monday through Saturday from 7:00 a.m. to 6:00 p.m. The wet mining process produces less noise than does dry mining. The dredge is electrically operated. There will be no diesel exhaust and no bulldozer or rock crusher noise. Moreover, the berm will provide a noise barrier, reducing impacts along Kelleher Road. No noticeable odors or heat will be produced by the operations. Dust levels will be minimal. The environmental effects are predicted to be significantly less than those associated with operations under SPU 93-025.

15. An Environmental Checklist was prepared and reviewed, as well as a Critical Areas Checklist, and a Fish and Wildlife Habitat Assessment. Also submitted were a Proposed Mitigation Plan, a Surface Drainage Analysis Report and a Hydrogeology Impact investigation.

16. Thomas Creek is located just south of Kelleher Road. It is more than 100 feet from the pit at full development. The hydrogeologic investigation concluded that the proposed additional mining will have little or no effect either on the creek or on surrounding ground water conditions. The pool is hydraulically isolated from deep well systems developed to the north. Down gradient wells to the south are too distant to be materially influenced. In order to insure that these predictions are accurate, the Staff is recommending a monitoring condition.



17. The Surface Drainage Analysis described a roughly four-acre expansion of the existing pool, bringing it to a total of 800,000 square feet. The report calculated that the entire 100-year storm-event contribution from this project without any outflow, infiltration or evaporation would raise the pool only a little over a half foot. The normal winter pool elevation is 30 feet; the lowest potential spill location out of the pool is at elevation 45 feet. Thus, all of the surface runoff due to this project will easily be retained within the limits of the pool.

18. The Fish and Wildlife Habitat Assessment determined that Thomas Creek is functionally isolated from the proposed mining expansion and that the created lake will not affect the functions and values of the fish and wildlife habitat in the riparian buffer of the creek. The report recommended, however, that the area between Kelleher Road and the lake edge be planted with a mixture of native trees. Areas where the standard 100-foot buffer applies that are not currently treed should be planted as well.

19. As a result of the environmental review, a Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued on March 19, 2003. No comments were received. The MDNS was not appealed.

20. The conditions included in the MDNS are standard requirements for compliance with existing County, State and Federal regulations except for the following:

“As a condition of permit approval, the applicant shall submit a water level monitoring plan for approval by the Planning and Permit Center.”

21. A Reclamation Plan was approved by DNR following Skagit County approval of SPU 93-025. Upon approval of the replacement Special Use Permit sought here, Concrete Nor'west will amend the Reclamation Plan upon the basis of the plans included in this application.

22. The general criteria for Special Use Permit Approval are set forth in SCC 14.16.900(2)(b)(v).

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standard of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy or surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) For special uses in Industrial Forest-NRL, Secondary Forest-NRL, Agricultural-NRL, and Rural Resource-NRL, the impacts on long-term



natural resources management and production will be minimized.

(g) The proposed use is not in conflict with the health and safety of the community.

(h) The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

23. The Staff Report thoroughly analyzes the application against these criteria and finds that, as conditioned, the proposal will be consistent with them. The Hearing Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

24. The proposal is consistent with the purpose of the Mineral Resource Overlay (MRO) and the designation of the property as Natural Resource Land. After the mining activities have ceased, the site will be restored and re-vegetated. The lake will remain.

25. Specific operating standards within the MRO are contained in SCC 14.16.440(10). These include requirements for buffers, noise levels, blasting, aquifer protection, surface water protection, reclamation, and hours of operation. Given the authorized reduction of a portion of the buffer, this project complies with all of the MRO's regulatory requirements.

26. The Hearing Examiner is to apply a special list of review criteria in relation to mining operations in an MRO. These criteria boil down to a requirement for project approval if the impacts of mining at mitigatable through reasonable conditions to protect public health, safety and the environment. See SCC 14.16.440(9). The Examiner finds that adequate mitigation is achieved through project design and the imposition of the conditions of approval set forth below..

27. Notice of the application and of the hearing were properly given. There was no adverse written comment or testimony at the hearing.

28. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SCC 14.06.050(b)(ii).

2. The requirements of SEPA have been met.

3. Extracting of mineral resources is permitted as a Hearing Examiner Special Use within a Rural Resource-NRL district if located within a designated MRO. SCC



14.16.430(4)(g). Under SCC 14.16.440(3), the expansion of existing mining operations beyond the operational limits imposed by an existing approval requires a new mining Special Use Permit.

4. The findings support a conclusion that the project, as conditioned, will be consistent with the Special Use Permit Criteria of SCC 14.16.900(2)(b)(v) and the specific requirements for operations within a Mineral Resource Overlay area. SCC 14.16.440 (9)(10).

5. The following conditions should be imposed:

- (1) The project shall be conducted as described in the application materials, except as the same may be modified by these conditions.
- (2) The applicant shall obtain all necessary permits and comply with the conditions thereof.
- (3) The applicant shall comply with all conditions set forth in the MDNS issued on March 19, 2003.
- (4) The required critical area buffer shall be placed into a Protected Critical Area (PCA) that is recorded with the County Auditor, pursuant to SCC 14.24.170.
- (5) The applicant shall comply with the criteria for surface and ground water quality as set forth in Chapter 173-201A and 173-200 WAC.
- (6) Temporary erosion/sedimentation control measures shall be taken, in accordance with Chapter 14.32 SCC (Drainage Ordinance), and with the Surface Drainage Analysis submitted herein, including the clarification received on January 30, 2003.
- (7) Spill control measures shall continue to be applied, consistent with the existing Butler Mine Sand and Gravel General Permit issued by the Washington State Department of Ecology.
- (8) The applicant shall obtain a Surface Mine Reclamation Permit, pursuant to Chapter 78.44 RCW.
- (9) Operational hours shall remain in compliance with SCC 14.16.440(10)(i).
- 10) The applicant shall develop and implement a monthly water level monitoring program to monitor the effects of pit expansion on the nearby stream and ground water system. The monitoring program shall be reviewed and approved by the Planning and Permit Center prior to the initiation of mining activities. The program shall include, at a minimum, provisions for the simultaneous collection



of pool and adjacent creek elevations on a monthly basis. The monitoring program shall be implemented prior to pit expansion and shall continue during expansion. The monitoring information shall be reported to the County quarterly, referencing PL02-0686.

(11) The applicant shall comply with the recommendations of the Fish and Wildlife Habitat Assessment, dated January 20, 2003. In addition, areas where the standard 100-foot buffer applies that are not treed shall be planted with a mixture of deciduous trees and conifers.

(12) The project shall be commenced within the time frames specified in SCC 14.16.900(2)(d). If operations are to extend beyond the year 2005, the applicant shall advise the Planning and Permit Center.

(13) Failure to comply with any of the conditions of approval herein may result in permit revocation.

6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The requested Special Use Permit is approved, subject to the conditions set forth in Conclusion 5 above.



Wick Dufford, Hearing Examiner

Date of Action: May 19, 2003

Copy Transmitted to Applicant: May 19, 2003.

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.

