

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Big Lake Sand and Gravel, LLC
Greg and Traci Gilbertson
P. O. Box 1724
Stanwood, WA 98292-1724

Agent: Larry Willman
Intergroup Development Corp.
P. O. Box 4055
Bellingham, WA 98227

File No: PL05-0571

Request: Special Use Permit

Location: About 1.5 miles south of Big Lake, east of State Route 9,
within portions of SW1/4SE1/4 Sec.17 and SE1/4 Sec. 18.
T33N, R5E, W.M.

Land Use Designation: Rural Resource – Natural Resource Lands; Mineral
Resource Overlay.

Summary of Proposal: To operate a gravel mining operation on 35 acres of a 40-
acre site. The pit life will be approximately 30 years. The
project will have two phases: (1) road access, well drilling,
clearing, and minor pit run gravel removal, (2) major
mining activity, including installation of support facilities.
The second phase will include four sub-phases, extracting
overall about 4.2 million tons of material with progressive
reclamation.

Public Hearing: After reviewing the report of Planning and Development
Services, the Hearing Examiner conducted a public hearing
on February 8, 2006. The record was left open until
February 15, 2006 for additional information. Two
additional letters were received from members of the public
The applicant submitted two notebook binders containing
application material not previously included in the hearing
record and a response to one of the public letters.

Decision: The application is approved subject to conditions.

FINDINGS OF FACT

1. Big Lake Sand and Gravel LLC (Greg and Traci Gilbertson) has applied for a Special Use Permit to operate a gravel mining operation near Big Lake.

2. The site is 40 acres located near Mile Post 42.6, State Route 9. The property is about 1.5 miles south of Big Lake and east of the highway, within portions of SW1/4SE1/4 Sec. 17 and SE1/4 Sec. 18, T33N, R5E, W.M.

3. The zoning is Rural Resource-Natural Resource Lands and is within a Mineral Resource Overlay designation. Under SCC 14.16.430(4)(g) extracting and processing mineral resources requires a Hearing Examiner Special Use Permit if located within a mineral resource overlay.

4. There is a plateau in the southeast corner of the site where the elevation is highest, about 420 feet above sea level. The topography slopes down steeply to the north and west where, at the site boundary the elevation is about 200 feet. The average slope is 23%. The mining activity will affect 35 acres. A perimeter buffer will take up about five acres. At present there are no structures on the property. It is largely covered with deciduous forest.

5. The site is bounded along the northwest by an old railroad grade. State Route 9 is west of the railroad grade, and to the west of the road is Lake Creek. The creek flows under the highway north of the site but remains several hundred feet distant from the site. Triple Creek, a small tributary to Lake Creek, runs northerly east and north of the site.

6. The neighborhood is lightly populated. Properties to the west and north of the site are in low density single-family residential development and are zoned Rural Resource-Natural Resource Lands. Properties to the east and south are vacant, forest land zone Secondary Forest.

7. There is an estimated 4.2 million tons of gravel material that can be exported from the site. Removing this gravel will take approximately 30 years, dependent on market demand.

8. The plan is to develop in two phases. Phase one will involve access road construction, clearing, and the drilling of a drinking water well. Access development will require removal and storage of topsoil and about 29,000 tons of pit run gravel. A portion of this pit run will be taken from small area that is owned by the Washington State Department of Transportation and the County Parks Department. The rest will be removed from the mining site.

9. Phase two will be the principal mining phase. During this period the needed infrastructure will be installed. This will include site drainage facilities, a shop/garage/office building, a truck scale, and a portable screener. The domestic well

will be brought into production. A processing and material stockpiling area will be developed.

10. The mining operation will be extremely simple – limited to extraction, dry screening, and export. No gravel washing will occur on the property. No rock crushing. No wood chipping. No blasting. The equipment used in the mining will be an excavator, front end loaders, and a bulldozer. The screened gravel will be loaded on trucks and hauled away.

11. The extraction will be in four sub-phases:

Sub-Phase I will involve site preparation and the mining of approximately 12.4 acres. This sub-phase will remove and process approximately 1.2 million tons of material over a period of nine years.

Sub-Phase II will expand the mining to the upper slopes to the southeast, taking out gravel between elevations 420 and 360. This sub-phase will encompass about 10 acres, removing roughly 740,000 tons of material within a five year time frame.

Sub-Phase III will mine materials between elevations 360 and 270. The area will be about 2.8 acres and 1.3 million tons will be extracted within a ten year time.

Sub-Phase IV will complete the mining of the southerly 2.7 acres of the plateau slopes, bringing the pit floor down to about 210 feet. The total area involved in this sub-phase covers about six acres. Over 900, 000 tons of material will be taken out within six years.

12. During the mining sub-phases, topsoil will be stripped and stored on the site. After gravel extraction this top soil will be used to reclaim the mined areas as part of a reclamation plan submitted to and approved by the State Department of Natural Resources.

13. Three employees will work at the site during maximum operation. As proposed, employee work hours will primarily be 6 a.m. to 5 p.m., weekdays and Saturdays. These hours may vary during spring and summer according to market conditions. Site operations, however, will be limited to daylight hours. Occasionally demand may require extending operations to seven days a week. In order to insure compliance with noise regulations, the applicant has voluntarily agreed to avoid significant noise generating activities prior to 7 a.m.

14. A 100 foot buffer will be maintained around the entire site perimeter. This vegetated buffer will largely prevent views into the central mining and processing portion

of the site. This buffer should also shield residences from light and glare impacts. Moreover, since operations will be confined to daylight hours, lights should not normally be needed.

15. Access will be from SR-9 via a paved access-way near the southwest corner of the property. Due to slope constraints this is the only location where access is feasible and it is the nearest location to SR-9. The entry road will cross the old railroad grade now owned by the Parks Department. Parks plans eventually to create a public trail along this corridor. The applicant has negotiated an easement with Parks to cross their property. The applicant has also agreed to build the portion of the trail over which the easement will lie. Whether the pedestrian crossing will be a bridge or tunnel or some other means of insuring hiker safety is a matter for future negotiation. An internal roadway system consisting of two-lane gravel construction will route vehicles along a loop near the shop building and then back to SR-9. The Washington State Department of Transportation (WSDOT) has issued an access permit for the connection to SR-9.

16. During the initial stages of operation approximately 50 truck trips per day are expected to be generated. At full capacity operation up to 200 daily trips are possible. Parking for employees' vehicles, hauling trucks and operations vehicles will be provided on site. Six parking spaces will be provided for workers and visitors.

17. No waste oils, chemicals, solvents, or fuel will be stored on the site. Equipment maintenance will be performed off-site. The potential for contamination will be limited to on-site fueling operations and to the minor volumes of fuel contained in the fuel tanks of the on-site machinery and vehicles. On-site fueling will occur over a drip pan or absorbent pad and will conform with Best Management Practices for mobile fueling of vehicles and heavy equipment as specified in the Stormwater Pollution Prevention Plan, submitted in applying for the National Pollutant Discharge Elimination System (NPDES) general permit issued by the State Department of Ecology. A spill response plan has also been developed, and an emergency kit for responding to any spills will be maintained on the property.

18. Since no gravel washing is proposed for the operation, use of water from the well will be limited to modest drinking water use by employees and visitors. The amount of use will be substantially below the threshold at which a water right permit is required. Bathroom facilities are proposed to be portable units which will be self-contained. No septic system is proposed. No discharge of sanitary waste will occur. Water for roadway dust control will be hauled in with water trucks.

19. Stormwater will be fully contained on the property in infiltration basins in the pit floor which will gradually and modestly recharge the ground water. There will be no increased off site surface flows as a result of the mining operation. The Stormwater Pollution Prevention Plan contains detailed strategies for reducing the potential for pollutant discharges into the ground water. The filtering effect of infiltration should eliminate degradation of water quality. However, monitoring wells have been installed

and monitoring under the NPDES permit will verify that the stormwater system is functioning properly.

20. Over the life of the project, the pit floor will be maintained at least 10 feet above the seasonal high groundwater table. No wet mining will occur. The separation proposed provides a factor of safety over the five feet normally required for dry mining.

21. Environmental review was conducted pursuant to the State Environmental Policy Act (SEPA). A Mitigated Determination of Non-Significance (MDNS) was issued on September 15, 2005 with an appeal period ending November 4, 2005. The MDNS was not appealed. The conditions attached to the MDNS are as follows:

1. The applicant shall comply with Northwest Air Pollution Authority requirements.
2. Sound levels generated by the operation shall comply with Skagit County Code (SCC) 14.16.840 Performance Standards and Chapter 173-60 WAC "Maximum Environmental Noise Levels," or modification to the operation shall be required.
3. Department of Ecology "Best Management Practices" shall be followed.
4. A storm water control and spill prevention plan shall be developed and followed.
5. During Phase I, mining and processing operations will be required to start after 7 a.m.
6. During all Phases, haul truck traffic before 7 a.m. will be limited to no more than 7 truck loops per hour.
7. During all Phases, processing and backhoe operations will be required to start after 7 a.m.
8. The applicant shall comply with Water Quality WAC's for surface and ground water quality, WAC's 173-201A and 173-200.
9. The applicant shall comply with all relevant provisions of Skagit County Code Section 14.24 (Critical Areas Ordinance).
10. All storm water infiltration facilities and erosion and sedimentation control measures shall be constructed and maintained in accordance with the NPDES Permit and the July 2005 Storm Water Pollution Prevention Plan prepared by Pacific Surveying and Engineering.

11. The applicant shall be required to comply with all relevant provisions of SCC 14.16.440 Mineral Resource Overlay (MRO), and other more restrictive conditions that may apply.

22. The environmental investigations conducted were reasonably sufficient to evaluate the environmental impact of the proposal.

23. Lake Creek is more than 300 feet from the mining operations. Triple Creek, a tributary which descends from a perched aquifer to the east is separated by a ridge and is more than 100 feet from the mining. Neither of these watercourses nor the aquatic life within them is likely to be adversely affected by the project. No sediment and no pollutants will be directly transported to these streams. To eliminate indirect sediment transport, one part of the access road will be built of spalls over fabric to knock the dirt off of truck tires.

24. In addition to the two streams, critical areas potentially affected are two Category III palustrine wetlands (50 foot buffer) which occur at the toe of the slope along the westerly site boundary adjacent to the railroad grade. The mining operations will not disturb these wetlands. About half the width of one wetland buffer will be affected by the access road. Buffer averaging is proposed, meaning that reductions in the affected area will be offset by buffer increases elsewhere. The disturbed area between the road and the wetland will be planted with shrubs and trees after road construction. The wetlands and their buffers will be placed within Protected Critical Areas (PCAs) and given permanent protection.

25. Based on hydrogeologic investigations, it is highly unlikely that existing wells in the neighborhood will be influenced at all by the mining project or by its domestic well. Similarly, no effect on existing surface water diversions is probable.

26. A noise analysis was conducted beginning with monitoring of existing conditions at several residential receiving properties to the north, northwest, and west of the site, along with a non-residential location at the southwest property boundary. The proposed mining activities were then modeled to predict the expected noise levels at each mining phase. The calculated sound levels indicate that predicted sound from all mining and processing activities will, in general, meet daytime noise limits. However, without noise mitigation, noise levels will exceed nighttime limits between 6 a.m. and 7 a.m. at some locations. The consultant recommended reduced activities before 7 a.m. in order to meet the nighttime levels and the applicant has agreed. These reduced activities are detailed in the conditions to the MDNS.

27. The noise analysis to some extent exaggerates the likely noise levels at receiving properties during project operations. Originally there was a wood debris chipping operation proposed for the site. During the application process, this operation was removed from the project plan. However, the noise analysis was made before this occurred and so it accounts for an additional noise source which will not in fact be

present. Overall it appears that noise from the mining project will not be unacceptably loud.

28. Concerns about fugitive dust caused the applicant to commission an air quality impact analysis. An estimated emission inventory was made and the results subjected to modeling analysis to predict the potential impacts of project-generated small suspended particles (PM10) on the air quality of the vicinity. The results indicate that the project will have little effect. Predicted peak impacts at 1000 feet were substantially below the relevant ambient air quality standard. Any increased concentration at residences in the area probably would not be noticeable. Watering from trucks will be carried out as a standard dust control activity.

29. As noted, the traffic study estimated peak daily haul truck trip ends at 200. This is based on a maximum production figure of 350,000 tons in a year, a figure that is larger than is really considered likely. The 200 daily trips, if they were to occur, would be during the height of the summer construction season. Peak hour truck trip ends during such times were estimated at 50 per day. Average daily traffic volumes total approximately 1,200 vehicles for the affected segments of SR-9. Adding the maximum predicted daily peak number of truck trips to existing traffic volumes is not considered a change requiring mitigation.

30. The major traffic concern at the site has been sight distance associated with the access. Where the trucks will enter the highway, the distance a driver has to react to any entering truck ("stopping" distance) is judged to be adequate. But the "entering" distance does not meet what is recommended. This is the distance it takes for a truck to enter and accelerate to the speed limit without causing traffic to slow. The WSDOT approved the access permit for this project after evaluating both the likely traffic increases and the sight distances for the access.

31. Agency comments on the proposal were reviewed and none were identified that could not be addressed through conditions of approval.

32. Numerous letters were received from members of the public. Five citizens testified at the hearing. All had concerns about the proposal. The concerns related to noise, hours of operation, dust, drainage, stormwater runoff, water pollution, groundwater impacts, effects on wells, access and sight distance, fish in the creeks, impact of lights, traffic generated, and screening of the site.

33. The Examiner has examined all these letters and reviewed the presentation of the applicant and finds that all of the concerns have been addressed. The Examiner notes that the proposal is in a Mineral Resource Overlay where the land use planning expectation is clearly that the mineral resources present will at some point be exploited. He notes also residential development near the site is limited and should continue to be so. The basic limit in the Rural Resource- NRL zone is one home per forty acres. In the Secondary Forest-NRL zone it is one home per 20 acres. Within the extant zoning

context, he is convinced that with appropriate conditions, the various impacts feared by the public can be mitigated through appropriate conditions.

34. An oft-repeated concern was for more restricted hours of operation. The residents of the vicinity would like to see the mine operations limited to 7 a.m. to 5 p.m. from Monday through Friday with no weekend activities. The Hearing Examiner's options, in this regard are limited in the circumstances of this case. The first subsection of SCC 14.16.440(10)(i) reads as follows:

Within designated natural resource lands, the hours of operation may be unlimited. The Hearing Examiner may limit hours of operation to daylight hours or to such other reasonable limitation deemed necessary to address potential significant adverse impacts on existing land uses, on any portion of the mining site where mining activity is proposed to occur less than 1/4 mile from an existing Rural Intermediate, Rural Village, or Urban Growth Area designated lands. . .

The proposed mining operation is not located with ¼ mile of any of the zones mentioned where conditions limiting hours are authorized.

35. No pipeline or power corridor is located on the mine site. Both do exist nearby, but there is nothing in the record leading one to think that the mining operations will affect either one. The Devils Mountain fault lies near the project site, but the proposed mining method (progressive creation of 2:1 final reclamation slopes) should mean that earthquake occurrence will have little impact on the site. There is nothing to suggest that the existence of the mine will increase risks to the pipeline or powerline in the event of an earthquake.

36. 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.

2. The requirements of SEPA have been met.

3. The criteria for Special Use Permit approval are set forth at SCC 14.16.900(2)(b)(v), as follows:

(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 standards of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy of surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) For special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource 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 and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

4. The Staff Report analyses the application in light of these criteria and concludes that it is consistent with them. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

5. The use complies with the County Code by meeting the specific requirements for the Mineral Resources Overlay, SCC 14.16.440. That section states the following with respect to the Hearing Examiner's responsibilities:

- (9)(a) When reviewing an application for mining operations special use permit, the Hearing Examiner should recognize that surface mining is an essential economic activity and that it is not possible to extract minerals without producing some environmental impacts. The Hearing Examiner shall consider all relevant evidence and conditions that will mitigate detrimental impacts to the environment and conditions that protect the general welfare, health and safety. The permit shall be granted if the impacts are mitigatable. The burden of proof shall be on the Applicant.

6. The Examiner concludes that the applicant has met its burden in this case. He holds that the impacts involved here are mitigatable with the imposition of reasonable conditions.

7. With the conditions imposed herein, the project will comply with the operating standards mining applicable to the Mineral Resources Overlay, including appropriate buffers, maximum permissible noise limits, aquifer protection, surface water protection and reclamation. Blasting is not proposed. Chemical leaching will not be employed. See SCC 14.16.440(10).

8. In context, the project will not create undue environmental impacts. It will not intrude on privacy of surrounding uses. It will not conflict with general public health, safety and general welfare. The proposal actively advances the purposes for which Natural Resource Lands were designated.

9. A number of the concerned citizens in this matter recommended that a penalty clause be included among the conditions to be triggered in case of failure to comply with the permit and its conditions. The Code itself has built-in penalty provisions set forth in Chapter 14.44 SCC. Enforcement action is at the discretion of the permitting authorities.

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

CONDITIONS

1. The project shall be carried forward essentially as described in the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all necessary land use approvals, including a grading permit for the Department of Public Works for the construction of the of the driveway and employee parking area.

3. The applicant shall obtain all other required permits and approvals for the project and shall comply with the conditions thereof. These shall include, but not necessarily be limited to:

- a. A National Pollutant Discharge Elimination System permit from the Department of Ecology.
- b. A Surface Mine Reclamation Permit from the Department of Natural Resources.
- c. Approval by the appropriate authority of the employee water source as a Group B public water system.

4. Prior to operation of the proposed mine, the application shall record a title notification with the County Auditor.

5. If the applicant desires to change the operations as proposed, he apply shall for a permit modification, subject to Hearing Examiner approval. Such changes would include, but not necessarily be limited to: (a) inclusion of gravel washing or crushing, (b) onsite equipment maintenance or repair, (c) blasting, (d) wood chipping, (e) onsite storage of fuel, oils or chemicals, (f) significant increase in truck trip ends.

6. Fueling within the pit area may be performed only in accordance with Section 5.1.5.2 of the Storm Water Prevention Plan – “BMP’s for Mobile Fueling of Vehicles and Heavy Equipment.”

7. The mining activities shall not impact groundwater or neighboring wells.

8. Per the hydrogeologist’s recommendation, periodic monitoring of groundwater monitoring wells (OW-1 and OW-2 in the western portion of the site) is required. Semi-annual samples for gasoline, diesel and oil will be analyzed. More frequent sampling will be required and the list of analytes will be expanded if a chemical release is documented at the site.

9. The mitigation measures described by Cedarock Consultants in the January 17, 2006 technical report shall be implemented to avoid or minimize impacts to aquatic resources.

10. Mining shall at no point approach closer than 10 feet to the seasonal high groundwater table.

11. Chemical toilets and hand washing facilities shall be required on site.

12. Prior to mining all requirements of the County Critical Areas review team shall be met.

13. The applicant shall submit a Protected Critical Area Easement agreement for review and approval. When approved the PCA’s shall be filed with the County Auditor as required by SCC 14.24.170.

14. The applicant shall comply with all conditions of the Mitigated Determination of Non-Significance (MDNS) issued on September 15, 2005 (See Finding 21).

15. Mining operations shall be confined to daylight hours, Monday through Saturday. Operations on Sundays or outside of daylight hours shall be carried out only in extraordinary circumstances. Advance notice shall be provided to Planning and Development Services in all such cases, so that area residents can be alerted.

16. Dust control measures shall be implemented on both the pit floor and the access route in order to minimize impacts to adjacent residential property and SR-9.

17. Prior to commencing mining operation, the access approach to SR-9 shall meet all requirements of the Washington Department of Transportation, including sight distance requirements.

18. An access easement must be obtained from County Parks and Recreation prior to accessing the site.

19. Haul truck trip ends shall not exceed 200 on any day.

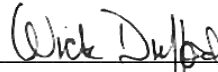
20. Warning signs advising of trucks entering the highway shall be placed on SR-9 sufficiently distant from the mine access point to warn approaching drivers.

21. Development shall be accomplished as provided in SCC 14.16.900(2)(d).

22. Failure to comply with any permit conditions may subject the permittee to enforcement proceedings, including stop work orders, monetary penalties and permit revocation.

DECISION

The request Special Use Permit is approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: March 23, 2006

Date of Transmittal to Applicant: March 23, 2006

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services 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 Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.