

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Belfast Gravel Company, Inc.
c/o Earl Curry
7325 Butler Hill Road
Burlington, WA 98233

Agent: Semrau Engineering and Surveying
c/o John Semrau
2118 Riverside Drive, Suite 208
Mount Vernon, WA 98273

Request/File No: Special Use Permit, PL 10-0338

Location: 7325 Butler Hill Road, within a portion of Secs 7 and 8, T35N, R4E, W.M.

Land Use Designation: Rural Resource - Natural Resource Land (RRc-NRL); Mineral Resource Overlay (MRO)

Summary of Proposal: To expand mining operations to approximately 53 acres by adding an adjacent 40-acre parcel. Site development will occur concurrent with segmental reclamation. Crushing, screening, recycling and processing activities are proposed on-site maintaining a 200-foot buffer from property boundaries. Mining extraction will maintain a 100-foot buffer from property lines.

SEPA Compliance: Mitigated Determination of Non-Significance (MDNS) issued July 7, 2011. No appeals.

Public Hearing: December 14, 2011. Public testimony for and against. Planning and Development Services (PDS) recommended approval.

Decision: Approval, subject to conditions.

Reconsideration/Appeal: A Request for Reconsideration may be filed with PDS within 10 days of this decision. The decision may be appealed to the Board of County Commissioners by filing an appeal with PDS within 14 days of the date of decision or decision on reconsideration, if applicable.

Online Text: The entire decision can be viewed at [www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner).

FINDINGS OF FACT

1. Belfast Gravel Company, Inc. seeks a Special Use Permit to expand an existing gravel mining operation. The request includes on-site crushing, screening, recycling and processing.

2. The site is located on the east wall of the Samish River Valley at 7325 Butler Hill Road within a portion of Secs 7 & 8, 35N, R4 E, W.M. The pit is on the east side of the road. The location is a short distance east of Old Highway 99. Jolly Road, which connects to Old Highway 99, intersects Butler Hill Road at the northwest corner of the property.

3. The Assessor's Parcel Numbers for the total site are P35918, P35919 and P35949. The expanded operations would involve P35949.

4. Presently the surrounding land is in a mixture of uses. Immediately to the north is the site of the Samish Pit, a gravel mine operated by Concrete Northwest. To the east is the Avalon Golf Course. To the south is an undeveloped parcel. Along Jolly Road and to the northwest are single family residences; to the immediate west and southwest are agricultural uses.

5. The subject property is zoned Rural Resource - Natural Resource Land (RRc-NRL) with a Mineral Resource Overlay (MRO). Properties to the west are zoned Agricultural-Natural Resource Land (Ag-NRL) and Rural Reserve (RRv). Properties to the north, south and east are zoned RRc-NRL.

6. Gravel mining at the site began sometime in the late 1940's. It appears, however, that this use was inactive for a number of years, during which residential development in the neighborhood occurred.

7. Current operations are largely confined to the northwest portion of the site. The proposal is to expand mining to the adjacent 40-acre parcel to the east. Overall, this would create a mining area of approximately 53 acres. There are about eight million cubic yards of export material within the boundaries of the site. The proposed expansion would extend mining operations for approximately another 40 years.

8. New mining on the site would occur in four quadrants beginning in the northeastern quadrant, then proceeding sequentially to the southeastern, southwestern and northwestern quadrants. The incremental development would be accompanied by segmental reclamation. The processing areas of the operation would remain in the northwest.

9. The mining development will require logging and conversion of approximately sixteen acres of forest, principally in the southeastern quadrant. The applicant proposes to harvest this timber prior to mining.

10. Mining activities would be limited to areas 100 feet from the property boundaries, except on the north where there is a neighboring pit. A no-berm mine-through is proposed to the neighboring pit. Crushing, screening, recycling and processing activities would be required to maintain a 200 foot buffer from property boundaries.

11. The pre-existing extraction which has occurred on the western side of the site has mined to a base elevation of approximately 60 feet above sea level. On the east side of the present mine is a steep face that slopes upward to an elevation of approximately 245 feet. The proposed extension of mining would progressively cut into this face and ultimately reduce the base elevation on the eastern portion of the site to slightly above 85 feet. The idea is to limit mining to at least 10 feet above the regional groundwater table. Staff recommends a condition to this effect. Portions of the site where mining has exceeded the 10-foot separation are to be filled to a level that meets the requirement.

12. A Hydrogeologic Site Assessment, dated July 8, 2010, was produced by GeoEngineers, Inc. The report reviewed groundwater flow and potential impacts to surrounding wells and water bodies. The report determined that groundwater beneath the westerly portion of the site occurs within an unconfined aquifer located about 45 feet above sea level. Above this elevation, the deposits are unsaturated, including deposits on the eastern portions of the site. Off-site wells to the east and west appear to have similar water level elevations. Groundwater flow is likely to the west and southwest toward the Samish River. Based on this analysis, the report concluded that mining above the water table as proposed can occur without direct impact to the underlying aquifer or nearby surface waters.

13. The water pollution potential of the operation is slight. The primary potential contaminant would be relatively minor volumes of petroleum related fuels contained in the fuel tanks of on-site machinery and vehicles. The applicant will be required to develop and comply with a Spill Response Plan and to employ best management practices identified in the Stormwater Pollution Prevention Plan.

14. The proposal was reviewed for compliance with the County's Critical Areas Ordinance (Chapter 14.24 SCC). A Wetland Delineation prepared by B&A, Inc. was issued on June 28, 2010. There are four wetlands on the site, three of which are less than 1,000 square feet in area and therefore exempt from critical areas regulation. The fourth covers 1,210 square feet and, according to Staff, may be eliminated if mitigation is provided for its removal.

15. There is an existing 5,000 square-foot man-made pond near the west boundary of the site, currently used to collect stormwater runoff. The pond contains hydrophytic vegetation and performs wetland functions. The Staff has concluded that this pond contains improved habitat over the wetland to be eliminated and provides suitable mitigation for its elimination. The Staff recommends requiring that the pond and a 100-foot vegetated buffer around it be recorded as a Protected Critical Area upon reclamation of the site.

16. During the early phases of the project, the pond will continue to function as a stormwater detention and infiltration facility, as well as a sediment control pond. Over the course of the project and afterwards, there will be no surface discharge to the Samish River. The small jurisdictional wetland that is to be eliminated will not be removed until sometime in the second 10 years of the project's life. Ultimately the stormwater pond will provide a 3 to 1 replacement for the regulated wetland that is eliminated.

17. A Noise Evaluation for the proposed operation, dated April 6, 2011, was conducted by Optimum Environment. The study evaluated potential overall noise levels at residences west of Butler Hill Road and identified noise attenuation and mitigation measures for the proposed activities. The report noted that the crushing, screening and washing activities are expected to be conducted on the present western flat area of the site. Material will be transported to the crusher and screener via conveyor belt and from loaders and trucks.

18. The noise report concluded that unattenuated noise levels occurring simultaneously from equipment and vehicles would likely exceed noise limits at Butler Hill Road, the west site boundary. Therefore, the report proposed mitigation in the form of a 10-foot-high earth or ecology-block berm along Butler Hill Road, leaving only an entrance wide enough to accommodate trucks and trailers entering and leaving the site. With this berm in place, the report determined that noise levels at the west boundary would be reduced sufficiently to meet applicable standards. Staff recommends a condition requiring the installation of such a berm.

19. Fugitive dust is a serious concern of neighbors of the mine. The State Pollution Control Hearings Board affirmed a penalty against the applicant issued by the Northwest Clean Air Authority (NWCAA) for dust problems caused by traffic exiting the pit in the summer of 2008. It appears that reasonable means to control dust, principally through paving or watering dust-generating areas, are readily available but were not used effectively in 2008. With this Special Use Permit application, the applicant has provided a Fugitive Dust Operations and Maintenance Plan which includes spraying water on roads and equipment. Staff recommends a condition requiring compliance with the plan.

20. The expanded mining operation will generate truck trips ranging between 50 and 500 daily. Parking for employees and operations vehicles will be provided on site. A Traffic Impact Analysis, prepared by DN Traffic Consultants, concluded that trucking to and from the site will not reduce the level of service at any key intersections.

21. However, the access routes (Butler Hill Road and Jolly Road) serving the site are currently below Skagit County Road Standards for Rural Local Access roadways. To address this issue, the traffic analysis recommended that these access routes be improved to meet standards and that improvements be made at two intersections: Jolly Road/ Old Highway 99 (turning radius) and Jolly Road/Butler Hill Road (site distance). Public Works concurred with this recommendation. The access roads will be expanded to a 32-foot wide cross section with two 10-foot wide paved lanes plus shoulders.

22. The processing activities on site will largely be shielded from outside views by perimeter buffering - either berms or vegetation. However, because some mining will occur upslope from the present pit, some operations will be visible from the properties and highways to the west. Moreover, during the dark months of the year, light from the activities at the mine will be visible off site.

23. The application seeks permission to operate seven days per week and 24-hours per day. However, normal operations will be from 7 a.m. to 10 p.m., and night operations will occur only when market demands require them. Analysis supports a finding that the gravel removal

operations can meet both the day- time and the more stringent night-time noise standards. The applicant indicated that they would accept a condition limiting ancillary crushing, screening and recycling operations to daylight hours.

24. Only three employees are anticipated to be working on the site, even at maximum operation. Portable toilets will be provided throughout the life of the project. For drinking water, the applicant has the option of using the existing domestic well or connecting to Public Utility District water.

25. Each of the four phases of the mining project is anticipated to take approximately 10 years. As noted, present mining operations are concentrated in the northwest quadrant of the site and this is the area where the screen, washer and crusher will be installed and where processing and material stockpiling will occur. Overburden soils removed in developing newly mined portions of the site will mostly be exported, minimizing the need for stockpiling.

26. Environmental review for this project was conducted pursuant to the State Environmental Policy Act (SEPA). A Mitigated Determination of Non-Significance (MDNS) was published on July 7, 2011. No appeals of the MDNS were received. The MDNS contained the following conditions:

1. The public right-of-way shall be kept clean. Tracking of mud and debris off site shall not be allowed.
2. The applicant shall comply with Northwest Clean Air Agency (NWCAA) requirements, including all dust control requirements both on and offsite.
3. The applicant shall comply with the provisions of Skagit County Code 14.24, Critical Areas Ordinance. All critical areas and associated buffers impacted by the proposal shall be, at a minimum, restored to its previous function and value immediately following completion of the project.
4. Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works, shall be in place prior to the initiation of the project pursuant to Skagit County Code (SCC) 14.32, Drainage Ordinance. The applicant shall maintain all temporary erosion/sedimentation/ control measures in accordance with the Skagit County Drainage/Erosion/ Sedimentation Control Ordinance. Said measures shall remain in place until completion of the project.
5. The project shall comply with noise, vibration, light/glare limitations as per SCC 14.16.840.
6. The project is limited to those activities described in the SEPA checklist and supporting documents. Significant deviation from the proposal may require additional review and approval by Skagit County Planning and Development Services.
7. The applicant shall comply with the provisions of Washington State Administrative Code (WAC) 173-200 & 173-201A as required to prevent surface water quality and groundwater impacts. Best management practices shall be utilized to prevent interference and/or degradation of water quality.

8. No gravel mining operations shall occur within 10 feet of the groundwater table as established by the Hydrogeologic Site Assessment report by GeoEngineers, dated July 8, 2010.

27. Notice of the project was given as required by law and appropriate notice was given of the public hearing. The hearing record included correspondence from interested agencies and letters and emails from residents of the vicinity.

28. The agency comments are responded to in the conditions of approval. At the request of Avalon Links, a fence is being required along the east border.

29. In general, the residential neighbors of the mine opposed its expansion, citing ongoing experience with excessive dust and rapidly-moving trucks. The neighbors say that the applicant has not instituted the dust control measures required by air pollution authorities following the 2008 violation. The opinion of residents in the vicinity is that the applicant is unlikely to abide by conditions imposed to make his operation compatible with residential use.

30. Clearly, the record of this applicant in accommodating the concerns of neighbors has not been particularly good. However, in this proposal he promises, in effect, to clean up his act. The Examiner is convinced that if appropriate management practices are instituted (along with the physical changes planned for the adjacent roadways), the dust problems can be alleviated. The Fugitive Dust Operations and Maintenance Plan, if followed, should adequately control emissions.

31. The critical concern then is over the applicant's willingness to abide by the conditions imposed. A family friend testified as to the applicant's good faith. The Examiner cannot assume that the conditions of approval will not be observed.

32. The mandated roadway improvements should be a significant help in reducing safety risks from truck traffic. Public Works should insure that the speed limit is prominently posted. The applicant's ability to influence the behavior of truck drivers is problematic, since the drivers are not likely to be under his direct control. However, the applicant or his employees should urge driver compliance with speed limits and safety requirements, verbally or with written materials. Contracts for the sale of gravel could address this issue.

33. Neighbors also expressed fears regarding the effects of the new mining on water wells in the area. On this issue, the Examiner is persuaded that the 10-foot separation mandated will be adequate to protect the groundwater resource and, by extension, the wells in the area. A well monitoring program to alert authorities to any problems that might arise is required as a condition of approval. Participation in the program by neighboring well owners will be voluntary.

34. Overall, while recognizing the potential for detrimental impacts from the proposed activities, the Examiner finds that such impacts will be adequately mitigated if the conditions set forth below are imposed and observed.

35. Base on the foregoing findings, the Examiner further determines that, as conditioned, the proposed use will be compatible with existing and planned land use in the vicinity; will not create undue adverse environmental impacts; will not generate intrusions on privacy; will not adversely affect the general health and welfare; will not interfere with long-term natural resource management and production; will not conflict with the health and safety of the community; will be supported by adequate public facilities and services and will not adversely affect such facilities and services; and will not be counter to the character, landscape and lifestyle of the rural area.

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

CONCLUSIONS OF LAW

1. In the Rural Resource--Natural Resource Lands (RRC-NRL) District and within a designated Mineral Resource Overlay, the extracting and processing of mineral resources is a Hearing Examiner Special Use. SCC 14.16.430(4)(g). A Special Use Permit for such a use requires an open record pre-decision hearing before the Examiner. SCC 14.06.050(b)(ii).

2. The requirements of the State Environmental Policy Act (SEPA) were met in this case by the issuance of a Mitigated Determination of Non-Significance (MDNS). Challenge to this conclusion is foreclosed by the failure to appeal the MDNS. Its conditions, therefore, become conditions of the Special Use Permit.

3. The inclusion of the subject property within the Mineral Resource Overlay means that it meets criteria for mineral lands of long-term commercial significance. Comprehensive Plan, Goal D-2, Policy 4D-2.1 under SCC 14.16.440(1), the Mineral Resource Overlay is intended to

maintain and enhance natural resource-based industries by conserving mineral resource lands, allowing continued operation of existing legally established uses, and by assuring that the use of adjacent lands does not interfere with extraction and quarrying of minerals.

The proposal is consistent with the Comprehensive plan.

4. The consideration of a Special Use Permit application for mining adds the following to the standard special use approval criteria (SCC 14.16.440(9)):

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 impact to the environment and conditions that protect the general welfare, health, and safety. The permit shall be granted if the impacts are mitigatable.

The Examiner concludes that mitigation is possible here and that the conditions imposed adequately fulfill the charge of this subsection.

5. The standard criteria for approval of a Special Use Permit are set forth at SCC 14.16.900(1)(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) The proposed use will not cause potential adverse effects on the general public health, safety, and welfare.
- (F) For special uses in . . . Rural Resource-Natural Resource Lands, the impacts of 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 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.
- (I) The proposed use will maintain the character, landscape and lifestyle of the rural area. For new uses, proximity to existing businesses operating via special use permit shall be reviewed and considered for cumulative impact.

6. The Staff Report analyzes the proposal in light of the above criteria and determines that the project, as conditioned, will be 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. The criteria for Special Use Permit approval have been met. The requirements of the Skagit County Code have been met.

7. The Examiner is convinced that it is possible to conduct operations at the subject mine in full compliance with all of the conditions of this permit. Because past performance has given rise to doubts about the applicant's commitment to such compliance, it is emphasized in the conditions themselves that failure to abide with any one of them may result in revocation, suspension or modification of the permit.

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

CONDITIONS

1. The project shall be carried out as described in the application materials, except as the same may be modified by these conditions.
2. In addition to the permits expressly noted in these conditions, the applicant shall obtain any other required permits and approvals, whether local, State or Federal, and shall abide by the conditions of same.
3. The applicant shall comply with all conditions of the Mitigated Determination of Non-Significance (MDNS). See Finding 26 above.
3. Per SCC 14.16.900(b)(iii), this permit may be revoked, suspended, or modified for violation of any permit condition.
4. Prior to initiation of the proposed mine expansion, the applicant shall record a title notification with the Skagit County Auditor per SCC 14.16.870.
5. Prior to the commencement of mining on Parcel 35949, the applicant shall apply for and obtain a Department of Natural Resources (DNR) Surface Mine Reclamation Permit per Chapter 78.44 RCW.
6. Along the west, south and east boundaries of the site, a 100-foot buffer shall be maintained for mining operations. Crushing, screening, recycling and processing shall not be conducted within the property closer than 200 feet from property boundaries.
7. A 10-foot separation shall be maintained between the pit bottom and the ground water table.
8. Mining and other operations conducted at the site shall not cause State water quality standards to be exceeded. The applicant shall develop and implement a Spill Prevention Control Plan and a Storm Water Pollution Prevention Plan and submit the same to PDS. Violation of these plans shall be a violation of this permit condition.
9. Prior to the beginning of mining operations on Parcel 35949, the access approach to Old Highway 99 shall be upgraded to meet all requirements of Skagit County Public Works Road Standards, including sight distance requirements and other applicable regulations.
10. The applicant shall develop and implement a Spill Prevention and Control Plan and a Storm Water Pollution Prevention Plan.
11. The applicant shall construct a 10-foot high berm along Butler Hill Road to mitigate noise impacts, as described in the Noise Evaluation by Optimum Environment, dated April 6, 2011.

12. The applicant shall continuously implement the Fugitive Dust Operations and Maintenance plan submitted with this application and shall take any additional actions necessary to implement Reasonably Available Control Technology (RACT) for dust control as specified by the Northwest Clean Air Agency (NWCAA). The plan may be modified as necessary to achieve RACT. At no time shall emissions exceed standards established by NWCAA. Dust emissions exceeding NWCAA standards shall be a violation of this permit condition.

13. In mitigation for the excavation of Wetland W, a Protected Critical Areas (PCA) agreement shall be approved and implemented for the storm water pond and shall include a 100-foot vegetated buffer around the pond. The PCA requirements and conditions need not be implemented until reclamation of the area concerned and the recording of the agreement may be deferred until final reclamation.

14. Prior to commencing expanded mining operations the applicant shall provide a groundwater monitoring plan. The plan shall provide for baseline monitoring preceding the proposed expansion of mining. Thereafter the monitoring shall be performed twice a year for the duration of mining activities. At a minimum, the plan shall require monitoring of static water levels and sampling for pH, temperature, conductivity and turbidity. The monitoring effort shall include the existing onsite domestic water supply well and any neighboring wells whose owners are willing to participate. Annual results and trends indicated in the monitoring program shall be summarized and submitted to PDS.

15. Per Chapter 173-60 WAC, the maximum allowable noise level emitted from the subject property as received on residential property is 60 decibels. Between the hours of 10 p.m. and 7 a.m., noise levels must be reduced by 10 decibels and may not exceed 50 decibels. Noise levels continuously exceeding the maximum allowable noise levels under Chapter 173-60 WAC shall be considered a violation this permit condition.

16. The applicant shall make improvements to Jolly Road and Butler Hill Road, including intersection improvements, in accordance with the Traffic Impact Analysis by DN Traffic Consultants, dated April 8, 2011. The improvements shall be completed within two years of approval of this Special Use Permit. Appropriate permits shall be obtained from Public Works prior to construction activity within County rights-of-way. Speed limit signs shall be installed.

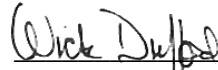
17. A fence shall be constructed on the subject property along its boundary with the Avalon Golf Course. The fence should be designed to discourage access to the subject property by golf course users and to provide protection for such users from potentially dangerous conditions.

18. The initial phase of the project shall be commenced within two years of approval of this permit and completed within 10 years thereof. Subsequent phases shall be completed in 10 year increments. These time limits may be extended on a showing of good cause. Additional time shall be allowed, if needed, for the completion of reclamation.

DECISION

The request Special Use Permit (PL 10-0038) is approved, subject to the conditions set forth above.

DONE, this 5th day of January 2012.



Wick Dufford, Hearing Examiner

Transmitted to Applicant on January 5, 2012

See Notice of Decision, Page 1, for Reconsideration and Appeal information.