

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Skagit County Public Works Department
1800 Continental Place
Mount Vernon, WA 98273
- Request/File No:** Special Use Permit, PL13-0276
- Location:** Existing gravel pit located east and adjacent to the intersection of Kelleher Road and Old Highway 99, within portions of Sections 7, 8, 17 & 18, T35N, R4E, W.M.
- Land Use Designation:** Rural Resource-Natural Resource Lands and within the Mineral Resource Overlay district.
- Summary of Proposal:** To expand the existing county Butler Hill gravel mine from 30 acres to 58 acres and to increase the maximum mining depth by approximately 70 feet -- that is, from the current 30 feet above mean sea level to 40 feet below mean sea level. In addition to gravel removal, the applicant proposes crushing, recycling, sorting and washing operations on site, and the construction of a scale house/office. At the planned rate of extraction over 200 years will pass before the wet mining phase will begin.
- SEPA Compliance:** A Mitigated Determination of Non-Significance (MDNS) was issued on October 17, 2013. The MDNS was not appealed.
- Public Hearing:** March 26, 2014. Testimony by staff and applicant. Three members of the public testified. Planning and Development Services (PDS) recommended approval.
- Decision/Date:** The application is approved, subject to conditions, including periodic permit review. Date: April 11, 2014
- 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. The Skagit County Department of Public Works (c/o Bill Dowe, Program Administrator) seeks a Special Use Permit to increase the mining area at the existing county-owned Butler Hill gravel mine from 30 acres to 58 acres and to deepen the pit by about 70 feet, eventually engaging in mining below the water table.
2. The request seeks a permit for the long term. Gravel mining has been going on at this site since 1936. Under the current proposal, the hole in the ground would eventually descend from 30 feet above sea level to 40 feet below sea level. Approximately 255 years are expected to pass before the final requested mining depth is reached.
3. The subject property is located east and adjacent to the intersection of Kelleher Road and Old Highway 99, within a portion of Secs. 7, 8, 17 & 18, T35N, R4E, W.M. The total Butler Pit site is approximately 135 acres.
4. The Parcel Numbers involved are P35940, P35953, P36815, P36818, P36856, P103620, P36850, P36851, and P36852. Mining activities will not occur on P35953, but top soil and overburden soil can be temporarily stored on that parcel.
5. In addition to the increase in gravel removal, the request asks permission for rock crushing, for recycling of asphalt/concrete, and for sorting and washing operations-- all of these within the subject property. Permission is also sought to construct a scale house/office onsite. Sorting and washing operations would maintain a 200-foot buffer from the property boundaries. Mining activities would maintain a 100-foot buffer from the property boundaries.
6. Topography at the site varies from a base elevation of 30 feet in the south, where mining has occurred, to an elevation of approximately 200 feet on Parcel P35953 in the northeast. Parcel 35940 in the northwest has a small Category III wetland near its southern boundary. Mining operations will steer clear of this wetland, maintaining a 150-foot buffer around it.
7. The mining expansion will proceed in six segments. Segment 1 is in the present pit area. From there the segments will proceed counter-clockwise through Segment 5. Segment 6 will be the below-water-table mining. This last stage is not expected to be reached for over 200 years. Segments 1 and 2 are each anticipated to have a 60-year duration.
8. The county Humane Society installation is currently located in the Segment 5 area. The mining of segments 4 and 5 will not begin for over a century and a half. The Humane Society operation will be allowed to stay where it is in the mean time.
9. The subject property is within Rural Resource-Natural Resource Lands (RRc-NRL) and a Mineral Resource Overlay (MRO). Properties adjacent south and west are zoned as Agriculture Natural Resource Lands (AG-NRL) and are currently used for farming. Properties on the north and east are zoned RRc-NRL. Immediately northeast is the Avalon Links Golf Course.

10. RRc-NRL zoning generally allows residential development at one residence per 40 acres. Using the Conservation and Rural Development (CaRD) technique, four residences (1 per 10 acres) could be approved. Within a quarter mile of MRO-designated areas density is limited to one residence per 10 acres.

11. Thomas Creek is located to the south, over 200 feet from any gravel mining. Kelleher Road lies between the project site and the creek. After professional evaluation, it was concluded that the mining operations are unlikely to have any effect on either the creek or on wells in the vicinity.

12. The applicant proposes to excavate beyond the reclamation limits in most areas and then, when above-water mining is complete, to replace the overburden soils. In the interim, overburden soils will be stored on Parcel 35953. In order to conduct the additional mining and store the overburden, some timber harvest will be required. However, by and large the approximately 75 acres of contiguous county-owned property to the north will not be cleared and will remain well vegetated.

13. The Segment 1 area, site of pre-existing gravel mining, will be the location of site drainage facilities, processing and material stockpiling, the crusher and screen, and, if necessary a wash plant. A drainage pond will be created in Segment 1 to collect and infiltrate any surface water runoff that occurs during mining. As necessary to accommodate runoff, the drainage pond may be expanded into adjoining segments.

14. Over 200 years in the future, Segment 6, the wet mining area, will be developed in the middle portion of the prior segments. The wet mining will be limited to the upper unconfined aquifer. It will result in the creation a pond which is planned to remain as part of the reclamation features. As noted, mined areas not covered with water will be restored by replacement of overburden according to the reclamation plan. A 100-foot reclamation buffer will be maintained around the entire site.

15. During the long period of expansion, the intensity and scope of operations at the mine are not anticipated to change from present levels. Truck trips generated will remain the same -- the heaviest use being up to 100 trips per day during the summer months of road construction. No additional traffic impacts are expected on surrounding roads. Parking for employees, truck and operations vehicles will remain available on-site.

16. The level of employment at the site will fluctuate depending on activities at the site. On a daily basis the only people working in the mine are truck drivers who are either loading their trucks with product or dumping spoils. During the chip sealing season, the number of people on-site may increase slightly by adding a loader operator and a water truck operator. When aggregate crushing is going on, up to six employees may be present on site. During wet mining up to 10 on-site employees may be required.

17. The hours of operation will be Monday through Saturday between 8 a.m. and 4 pm. from mid-October through mid-April. During the mid-April to mid-October time frame, the hours may be expanded based on demand to from 6:30 a.m to 5 p.m.

18. A large earth berm screens most of Kelleher Road from the gravel pit. Existing trees and vegetation will be retained along the property borders. It is anticipated that the levels of noise generated by on-site machinery and trucks will not exceed County standards. There will be no blasting. Perimeter buffers will also limit views into the mining and processing areas. There may be some light and glare from trucks and equipment in the early morning and evening during the winter, but vegetation around the site will mitigate these impacts.

19. The property is served with potable water by Public Utility District #1. If an office and restrooms are constructed, potable water is available to employees and the public. Should gravel washing require the use of an on-site well, water use shall be limited to 5,000 gallons per day in order to remain within the water-right permit exemption of State law.

20. The project was reviewed under the State Environmental Policy Act (SEPA), an environmental check list was prepared, and a Mitigated Determination of Non-Significance (MDNS) was issued on October 17, 2013. The MDNS was not appealed. The conditions imposed were as follows:

1. The public right-of-way shall be kept clean. Tracking of mud, gravel 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. Mining activities shall not encroach into critical areas and associated buffers.
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 measure shall remain in place until completion of the project.
5. The project shall comply with noise vibration, and 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.

21. The project was reviewed for compliance with the Skagit County Critical Areas Ordinance (CAO). A hydro-geological report and a wetland delineation were submitted. On the basis of this input, the Staff concluded that critical areas requirements will be met, provided that a Protected Critical Areas (PCA) agreement is recorded for the wetland, including its 150 foot vegetative buffer.

22. The application was routed to County Departments. Their recommendations are included as conditions of approval.

23. Letters critical of the project were received from five citizens. Three members of the public, including one of the letter-writers, appeared at the hearing. Concerns were expressed about traffic impacts, in particular the desirability of a left turn pocket on Kelleher Road for eastbound trucks; about noise from the crushing operations; about the spillage of rocks from trucks damaging windshields of motorists; about effects of the proposed mining on wells and Thomas Creek; about a former dump in the northeast part of the property used for septic waste; and about current waste piles from past gravel crushing. One person testified in general support of the project.

24. Public Works responded to some of these concerns. They advised that neither the County Road Standards nor the Washington State Design Manual requires a left turn lane for this segment of Kelleher Road. They stated that intermittent rock crushing already has been conducted at the site and that noise from such activity has been satisfactorily buffered by berms and forest. They noted that the former septic dump had been remediated by a contractor in 1994 and that the Health Department monitored the work and approved the results.

25. The Examiner is persuaded that the technical work done at the site satisfactorily demonstrates that negative effects from proposed mining on area wells and on Thomas Creek are unlikely. As to noise, the applicant will be obliged to comply with County noise regulations and will be subject to regulation if it does not comply. It is noted that rock crushing will be limited to 200 feet or more from the property boundaries.

27. One complaint had to do with the large setback from mineral lands required on adjacent property. This can be addressed as a legislative matter or through a variance application, but is not properly an issue in this proceeding.

28. Public Works should examine the matter of current waste piles from past gravel crushing and, if they are causing a problem, the problem should be addressed. In addition, procedures should be instituted that will minimize the possibility of rocks flying off trucks after they leave the pit.

29. The Staff reviewed this proposal under the applicable Special Use Criteria. Based on this review, Staff concluded that the proposal, as conditioned will comply with the criteria. 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.

30. The Examiner has reviewed the provisions of SCC 14.16.440(9). Based on the record herein, he concludes that the proposed operations, as conditioned, adequately mitigate detrimental impacts to the environment and that the public welfare, health and safety will be adequately protected.

31. A couple of centuries is a long time for a project authorization to last. The Examiner believes that Public Works should report back to PDS from time to time about its experience under the permit and whether any problems have arisen. A need, now unforeseen, may arise that would make revisions to this permit appropriate. New regulations or new technology may call for changes. Experience may show that additional conditions are called for. Therefore, the Examiner has provided for periodic review of the permit.

32. 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 subject matter of this proceeding. SCC 14.06.050(1)(b) (ii).

2. The requirements of SEPA have been met.

3. The proposal, as conditioned, meets the criteria for Special Use Permit approval. SCC 14.16.900(1)(b)(v).

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

CONDITIONS

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

2. The applicant shall obtain all other required permits and approvals and shall abide by the conditions of same.

3. The applicant shall comply with the conditions of the Mitigated Determination of Non-Significance (MDNS), dated October 17, 2013. See Finding 20 above.

4. Prior to operation of the proposed mine expansion, the applicant shall record a title notification with the Skagit County Auditor per SCC 14.16.870.

5. A Department of Natural Resources (DNR) Surface Mine Reclamation Permit shall be obtained per Chapter 78.44 RCW. No mining may take place prior to obtaining a reclamation permit from DNR.

6. The applicant shall update and implement the Spill Prevention and Control Plan and the Storm Water Pollution Prevention Plan.

7. The applicant shall implement the Fugitive Dust Operations and Maintenance Plan submitted with the application and use "Reasonably Available Control Technology" specified by the Northwest Clean Air Agency. During operations the plan may be modified as necessary to control dust emissions.

8. The applicant shall develop and secure PDS approval of a protocol for loading and driving trucks loaded with gravel that will minimize the likelihood that rocks will fly off the loaded trucks and damage other vehicles or litter roadways. The protocol shall be implemented by appropriate training and by requiring each driver to sign off on it.

9. A Protected Critical Area (PCA) agreement shall be approved and recorded for the wetlands onsite and shall include a 150-foot vegetated buffer. The PCA shall be recorded with the approval of this Special Use Permit

10. The maximum allowable noise level per Chapter 173-60 WAC allowed to be emitted from this property, a Class C EDNA property, onto a Class A EDNA property (residential) is 60 decibels. Between the hours of 10 p.m. and 7 a.m. maximum noise is reduced by 10 decibels and may not exceed 50 decibels.

11. The Special Use Permit shall be void if work is not started within two (2) years of the date of this order, or if the use is abandoned for a period of one (1) year.

12. Public Works shall report to PDS every 10 years from the date of this permit and provide a brief overview of operations and any problems that have occurred. PDS may re-open this record and call for further hearings on this mining activity when, in its discretion, such action appears called for.

13. Failure to comply with any condition may result in permit revocation.

ORDER

The Special Use Permit is approved, subject to the conditions set forth above, and subject to re-opening of the record when PDS so directs.

DONE, this 11th day of April, 2014.



Wick Dufford, Hearing Examiner

Transmitted to Applicant and parties of record on April 11, 2014.

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