

# **REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER**

DATE OF DECISION: August 2, 2006

APPLICANT/  
LANDOWNER: GREEN CROW OSO GRAVEL PIT

APPELLANT: Tammy Blakey

RESPONDENT: Department of Planning and Development Services (PDS)

FILE NO.: 97 111758-01 LU

TYPE OF REQUEST: 1) 165 acre expansion and major modification of an existing Conditional Use Permit (ZA 9311251/97-11758)  
2) SEPA appeal from a Determination of Nonsignificance

DECISION (SUMMARY): 1) Expansion and major modification GRANTED subject to preconditions and conditions  
2) SEPA appeal DENIED. However, see Findings & Conclusions and Conditions

## **BASIC INFORMATION**

GENERAL LOCATION: The property is located at 18811 SR 530 NE, Arlington, WA

ACREAGE: 165 acres in the expanded area

ZONING: Rural 5-Acre & Forestry

OPEN SPACE: Required buffers as shown on the site plans

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: LDMM (1 du/20 acres) RR-5 (1 du/5ac), RR (1 du/5 ac Basic, plus Commercial Forest and Commercial Forest – Forest Transition with Mineral Lands Overlay

Subarea Plan: Arlington

Subarea Plan Designation: Rural (.02-4 du/ac)

UTILITIES:

Water: Individual wells

Sewage: Septic

SCHOOL DISTRICT: Arlington

FIRE DISTRICT: No. 25

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve subject to conditions

Public Works: Approve subject to conditions

**INTRODUCTION**

The applicant filed the Master Application on June 30, 2005. (Exhibit 1A)

The Hearing Examiner (Examiner) made a site familiarization visit on May 11, 2006 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 26, 27 and 28)

A SEPA determination was made on March 30, 2006. (Exhibit 25) A SEPA appeal and declaration was filed by Tammy Blakey on April 19, 2006. (Exhibits 40 and 41)

The Examiner held an open record hearing on April 26, 2006, the 138<sup>th</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

**PUBLIC HEARING**

The public hearing commenced on April 26, 2006 at 9:00 a.m..

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Pursuant to Snohomish County statutes, both matters were heard together with the applicant to proceed first, and then the appellant, followed by the staff and the public. After which all parties would be allowed sufficient opportunities for rebuttal.
3. Mr. Roy Jones, representing the applicant appeared, and submitted Exhibit 43, which was a large aerial photograph that was taken in 2005 and gives an excellent view of the area and the proposed modification.

He referred to various parts of the site plan. (Exhibit 16) He stated that at any time, no more than 30 acres will be disturbed and that they will start with a cell and then close the cell prior to proceeding on to the next one, as these cells are shown on the site plan.

He stated in the north and center of the aerial photograph will be the recycling area for concrete, concrete with rebar, asphalt, brush and soil. He stated that they will not take contaminated material and that the hours of operation would be Monday-Saturday from 7:00 a.m. to 5:30 p.m. He asked to have the trucks go on the property at 6:00 a.m. so they can get off the roads, and also asked for the definition of which holidays to be closed.

He stated that they will increase the truck road trips to 290 per day, and indicated that there is an interest and demand in the county today for the gravel.

He stated that in the past they have met the limit and shut down, and that the state has approved this limit of the trucks for up to 314 round trips, including trucks and cars of the employees. He stated that they are nearly at the end of their permitted inventory of gravel. He indicated that twice a year water testing is recommended by the consultants. He indicated that reports are sent to PDS, who can then post it on the internet. He indicated that he has no contingency plan if water stops flowing today.

He indicated that the truck trips, on an average day, are 150 per day.

He stated that the reclamation facility dumping will be monitored to ensure that there are no toxic facilities brought in with the reclamation waste.

4. Mr. Ken Alexander, Senior Hydro biologist stated that they collect samples every three months, and they check for E-coli. He indicated that Exhibit 47 is the first quarter of 2006 groundwater reports, and has never found any instance of E-coli from animal or human waste. He stated that they recommend sampling only once per year. He indicated that there is no health impact from a high coli form levels if no arsenic is present and they have found none of this here.
5. Mr. John Turcott appeared on behalf of the applicant and spoke to grading and surface water and drainage. He indicated that all surface water will be retained on the site and all flows will be to the center of the property. The water is then filtered into the ground. He referred to Exhibit 16F. He also referred to Exhibit 48, and stated that this shows the drainage basin of 7200 acres, with 30 acre sites. He referred finally to Exhibit 16G and stated that the water will drain into the ground in the same place as it did before, and that any impacts would be minimal.
6. Mr. Keith Johnson appeared on behalf of the applicant and stated that the intent is to determine that there is no contamination within 10 feet of the aquifer, and there is nothing that will cause a change here, and that what is designed for this location is reasonable.
7. Ms. Tammy Blakey, the appellant, appeared and asked questions of Mr. Paul MacCready, PDS. He stated that he did not check with the Health District, but did send a visual packet to them, and he relied on the experts. He indicated that he did not do any review of value to the properties.
8. Ms. Blakey offered testimony and stated that she feels that her property has been devalued by 20%. She stated that the water is not going into the Smith's well site like it used to. She indicated that the Health District records require new well sites to not show any bacteria. She stated that she had heretofore submitted letters showing a violation of a condition of approval by the bringing in of the asphalt and the concrete. She stated that she feels that the wells have not been evaluated.
9. Mr. John Keegan, attorney for the applicant, indicated that he had nothing further to add.
10. Mr. MacCready stated that property values are not an issue in this matter and he had no report of violations.
11. Mr. Crossman of PDS stated that there were requirements as to waste facilities and groundwater contamination.
12. By agreement from all parties, the matter was continued to May 24, 2006 at 9:00 a.m. for a hearing on noise issues only.

13. The hearing proceeded on May 24, 2006 at 9:00 a.m.. Ms. Blakey called the Hearing Examiner's Office and indicated that she was unable physically to attend the hearing. However, she did not request a continuance, but would submit her noise information.
14. The Examiner indicated that he had viewed the area between the hearings on May 11, 2006, in the afternoon.
15. Mr. Richard Steffel, a noise expert appeared on behalf of the applicant and stated that he had conducted noise studies for 15 years for various agencies. He indicated that he has a masters degree. He referred to Exhibit 64, showing sound level measurement and water sampling locations and in a later reference to Exhibit 65 indicated that this was a summary of his report. He indicated that it generally shows sound levels of 72 dBA and they are not exceeded at Jerry Smith's property. He indicated that the sound levels comply with all of the requirements of the code and there is a compliance of all limits at all locations, especially the new locations. He stated that the expanded truck traffic is 290 trips one way, and Exhibit 66 shows the average of truck trips per day. He stated that the change in hours requested would still allow compliance with the county noise limits, except in a very rare case. He concluded that Exhibits 66 and 67 show that the violations heretofore caused by the trucks are no longer there. Finally, he referred to Exhibit 68 which shows the old access road, which is now closed, and the new access road. He stated that they have measured normal pit operations, such as the wash plant and the portable crusher as well. He indicated that Exhibit 22 gives the reasons for adjusting locations. He referred to Exhibit 58, which is a response to the report and stated that he simply can't get to it from there.
16. No one else wished to testify and the Examiner left the record open until June 2, 2006 for any comments by both sides.
17. It is to be noted that Ms. Blakey submitted a letter to her from Alan Burt of SSA Acoustics dated May 12, 2006, providing her input on the sound issues. (See Exhibit 58, pp. 1-9) Subsequent to the hearing, the Examiner, after reviewing the record, determined that he needed more information. A letter was sent to all parties indicating that the matter would be heard further on August 30, 2006 at 9:00 a.m. (Exhibit 74) Subsequently, however, the applicant desired that the matter be heard as quickly as possible, so the matter was re-set for hearing to July 18<sup>th</sup> at 9:00 a.m.
18. At this re-opened hearing, Mr. Jones testified and referred to Exhibit 43 and stated that there would be an additional approximately 314 trips; with one trip in and one trip out, and referred to Exhibit 35, which indicated that the Washington State Department of Transportation (WSDOT) had approved the additional trips at the access points.
19. Mr. Turcott appeared and referred to Exhibit 16G and indicated that the recycling piles would be approximately 120' x 170' x 40' high. He stated that they will have an engineered drainage system and will be placed on concrete pads. He stated that the recycling would be approximately 300 feet from the stream to the north. He concluded by stating that they will apply the 1992 standard state water quality requirements.
20. Mr. MacCready stated that they had received traffic approval by the county, and the state, of 314 round trips, plus the impact fee to WSDOT. The truck traffic would be 290.
21. He indicated that Mr. Craig Odegaard, Code Enforcement Officer, PDS, had advised him by telephone that there was no violation of conditions, and that this case was closed.

22. Mr. Cliff Ennis appeared and stated that he had taken pictures last Sunday near the recycling area and these pictures are submitted as Exhibits 80-83. These show the current site of the mining operation, some of which are piles of broken concrete.
23. Ms. Blakey asked questions of the parties and concluded by stating that she felt that there was a violation of the Conditional Use Permit, that there is no checking of the flow of water, that there is no monitoring of waste sites, and that there is absolutely no enforcement or monitoring and that the reclamation facility is too risky.

The hearing concluded at 11:00 a.m.

**NOTE:** Audio tapes of this hearing are available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS:**

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. The PDS staff report has analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA) evaluation with its recommendation and conditions. This report is hereby accepted by the Examiner as if set forth in full herein.
3. The applicant is requesting approval to modify and expand an existing conditional use permit and official site plan. The request (Exhibit 1) is to:
  1. Expand the area of excavation by 165 acres, phasing the excavation in approximately 10-acre sections, with no more than 30 acres disturbed at one time. Ten acres would be actively mined, ten acres would be under reclamation and ten acres would be prepared for mining. The proposed new work areas are north and northwest of the existing excavation sites.
  2. Modify Condition I of the Hearing Examiner's decision to allow importing construction waste, such as soil, organic debris, concrete with rebar, and asphalt.
  3. Modify Condition H of the Hearing Examiner's decision to allow the installation of a new waste recycling facility; a grinder/chipper with screens and a second crusher with equipment normally associated with the recycling operation.
  4. Modify Condition D of the Hearing Examiner's decision to allow the hours of operation to be increased to 7:00 a.m. to 5:30 p.m. Monday through Saturday. In addition, allow trucks to enter the site at 6:00 a.m. to prevent trucks lining up on the highway waiting for the gates to open. No truck will leave the site until 7:00 a.m. Define holidays to include New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the Day after, and Christmas Day.
  5. Modify Condition O of the Hearing Examiner's decision to allow for an average of 290 truck loads per day, 10 employees and 5 delivery and sales people for a total of 305 round trips per day.
  6. Modify Condition 2 as revised by the Snohomish County Council to provide annual reports to PDS to insure that the aquifer is not being adversely affected so long as the excavation continues.

7. Modify Condition 3 as revised by the Snohomish County Council to submit noise reports annually to PDS.
4. A Conditional Use Permit for the mining operation was originally issued in 1994 and received approval of a major revision on December 12, 2000 to increase production and add an access and expand the hours of operation and add a wash plant. The total expanded site area is 165 acres, of which 140 acres are to be excavated.
- 5A. The site is surrounded by typical rural uses. The nearest residence to the west is approximately 1,300 feet from the excavation site. The Flying T Ranch occupies a site in the river valley across SR 530. Several residences are located east of the site along Ramstead Road, with the closest sitting approximately 1,000 feet from the nearest proposed excavation area.
- 5B. An 11-acre forested Category 2 wetland (known as Wetland B) is located on-site near the center of the site. Three other wetlands are located nearby outside the conditional use area.

A small Type 4 stream flows out of the north end of Wetland B along the edge of the conditional use (CU) area. The stream descends steeply to the west and flows into a larger Type 3 stream outside the CU area. The larger stream may contain anadromous fish.

The stream and wetland and their buffers will be located within a Native Growth Protection Area (NGPA). It was the determination by PDS that the application complies with Chapter 30.62.SCC.

6. Since its inception, there have been many discussions and testing of the noise issues, which were particularly annoying to Ms. Blakey. There have been allegations and testimony of noise violations, but with the exception of an occasional reading, there was not sufficient evidence of noise violation such as to impose a violation or penalty because the noise violations did not meet the county's standards. Nevertheless, the conditions requiring control of the noise must remain to insure that continual efforts are made to meet the County noise standards requirements.
7. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions. (See Pages 4 and 5, Exhibit 39)
8. Both Snohomish County and the WSDOT have approved the increased truck traffic on the roads. While the Examiner notes that these large gravel trucks are not paragons of virtue when it comes to noise and road traffic, nevertheless, there has been no expert testimony presented which would require their removal.
9. The proposal is outside of all designation Urban Growth Areas (UGA) and is designated Low Density Rural Residential (1du/20ac), Rural Residential - 5 Acres (1du/5ac), Rural Residential (1du/5ac basic), Commercial Forestry, and Commercial Forestry Forest Transition on the GPP Future Land Use Map (FLUM).

It is also overlain with a Mineral Lands designation which includes those mining sites which are zoned MC and for which state surface mining permits are issued.

10. The conditional use for mineral extraction is found in Section 30.31D.100-160 SCC. The PDS staff has analyzed the conditional use and its effect. This analysis, found on pages 7-10 of the PDS staff report (Exhibit 39) has been reviewed by the Examiner and is accepted as properly applying to this request.
11. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
12. The Snohomish County Council has directed that the gravel from mineral reserves be utilized and the land use designation allows this use. The benefit to the public generally from the use of the gravel in the construction of homes and other buildings is such as to be allowed even though the noise from trucks and their appearance on the roads can be annoying. In the absence of any expert testimony that will allow denial of these uses, the Examiner must on balance, allow the excavation of the gravel to proceed with carefully controlled conditions which are reasonable.
13. Exhibit 43 gives an excellent bird's eye view of the site as it exists now and the proposed expanding areas and reclamation areas, and when viewed in conjunction with Exhibit 15, the proposed use is a reasonable use which would allow the removal of the gravel while at the same time having the least effect upon the area if conditions were in place and enforced.
14. With regard to the SEPA appeal, Ms. Blakey has submitted an excellent memorandum setting forth her special concerns. (Exhibit 41) Other neighbors have submitted supporting statement from their own experiences. However, some of these, such as failure to enforce conditions, would not normally qualify as SEPA matters.
15. Responses to the SEPA appeal were submitted by Paul MacCready, PDS, Exhibit 42, the PDS supplemental staff report and the post-hearing brief of the applicant. (Exhibit 72)
16. The information submitted by all parties with regard to the SEPA appeal, while it elaborates and expands on the issues raised therein, does not present any new evidence which would show that there would be a probable significant adverse impact on the environment by clear and convincing evidence. Those persons appearing who expressed valid concerns as to what might happen in the future did not provide expert evidence or specific conclusions in support of their appeal. Therefore, since the decision to issue a Determination of Nonsignificance under the Snohomish County Code is entitled to substantial weight, and may be overturned only if proven to be clearly erroneous, the appellants have failed to carry that burden of proof to show this. (See SCC 30.61.310)

In conclusion, after reviewing all of the evidence, the Examiner is not left with a definite and firm conviction that a mistake has been committed, and therefore the appeal should be denied.

17. All parties have had experience with this request for several years, regarding continuing noise conditions. It is the finding of the Examiner that while the imposition of noise conditions sets parameters and standards, the proof in violation of these conditions is much harder to do. It can only happen in actual use and practice. Predicting what will happen, while providing some direction and guidelines will not indicate whether or not there will be noise violations. In the future, therefore, there needs to be regular monitoring to insure there are no noise violations.
18. Issues of traffic, land use, excavation and noise may be properly allowed with conditions. If these are imposed and enforced, the proposed use may be allowed.

19. The Examiner recognizes the frustration of Ms. Blakely with regard to the gravel pit and the years that it has gone on. However, the Examiner cannot find that this use was improper.
20. Any loss of value claimed by Ms. Blakey would require expert testimony to that effect, and a hearing to allow this position to be testified to. However, no evidence at this point in time is sufficient to justify denial of the request. There may be other remedies such as private nuisances for such relief.
21. The issue as to water and water contamination, the Examiner finds is properly set forth in the conditions and if there is a loss of water, then the proper party may so indicate that to the Health District and/or PDS for enforcement of violations of the code or conditions of this decision.
22. The Examiner finds that all of Exhibit 16 should be a part of the conditions, and not just Exhibit 16A alone.
23. The Examiner finds that monitoring of the wells and reports is a key to insuring that the water is to be protected from the gravel operation, not only as to quality, but also as to quantity, since in balance, water for human consumption must take a higher priority than a gravel operation which would destroy water supplies.
24. The enforcement of conditions in an operation of this type is key to insuring that allowing of the operation of the gravel pit is balanced with the protection of the surrounding neighborhood.
25. The placing of the recycling plant created serious concerns for the Examiner since recycling hills or mounds have been a problem in this county for many years. There were no written conditions with regard to the recycling. Therefore, the Examiner will impose conditions on the recycling to insure that the same problems don't happen here which have happened in other places.
26. The pictures (Exhibits 80-83) are an accurate review of the property as it is now. The Examiner notes in particular the pictures in Exhibit 81 appear to show dumping of illegal material placed there without permission. At the hearing, the Examiner was unable to determine when and who placed them there.
27. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

## **CONCLUSIONS**

1. The Examiner notes that the code enforcement officer has apparently indicated orally to Mr. Paul MacCready, PDS, that there are no code violations on the property. This is of concern to the Examiner since there were admissions at the hearing by the applicant himself, that there were some violations of the conditions. Furthermore, Exhibit 80 shows pictures of large amounts of broken concrete and piles of dirt on the property indicating that someone has surely violated the conditions. Therefore, the Examiner believes that this justifies a condition regarding continuous monitoring of the site in order to insure that the conditions are complied with, and there is no misunderstanding of what is required of the applicant in the future. This is especially true where the Examiner is the one who has authority to impose conditions. (30.42C. 100 SCC)
2. The request meets the requirements for the issuance of a CUP under Chapter 30.42C SCC. In particular the decision meets the criteria therein for a CUP as set forth in SCC 30.42.100.

3. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
4. On balance, the request for the allowance of the expansion of the gravel pit may be properly done if the following conditions provided are enforced and adhered to by the applicant.
5. The request should be approved subject to compliance by the applicant with the following Precondition and Conditions:

### **PRECONDITIONS**

1. A record of developer's Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.
2. The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area A in the amount of \$60,288.00.
3. The applicant shall make a payment to Snohomish County for the WSDOT in the amount of \$11,304.00 for mitigation of traffic impacts to state highways.
4. The amount \$30,724.00 shall be paid to the City of Arlington for traffic impacts to projects within the City. Proof of payment shall be provided to the county.

### **CONDITIONS**

- A. Exhibit 16 dated January 27, 2006 shall be the official site plan; any discrepancy between the content of the official site plan and the performance standards of Title 30 SCC shall be resolved in favor of the standards contained within Title 30 SCC. Revision of official site plans is regulated by SCC 30.42C.110.
- B. All operations shall comply with the standards of SCC 30.31D.100-160.
- C. Prior to initiation of any site work or development activity; and/or prior to issuance of any development/construction permits by the county:

- i. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The applicant may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland/stream, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to Planning and Development Services for review and approval prior to installation.

- ii. A Critical Areas Site Plan (CASP) shall be recorded with the county auditor for critical areas and buffers that lie within a Native Growth Protection Area (NGPA). The following NGPA restrictive language shall be reflected on the CASP: "All NATIVE GROWTH PROTECTION

AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees.”

- D. All development activity shall conform to the requirements of Chapter 30.63A SCC.
- i. A ten foot (10) vertical separation above the maximum seasonal high groundwater table for sand and gravel extraction on the site shall be required. Maximum excavation depths have been established for Areas A through F, inclusive, and Area L per the Groundwater Elevational Report prepared by Geo Group Northwest Inc. and dated January 31, 2006.
  - ii. Work Areas G through K, inclusive, and the northern portions of Work Areas M through P, inclusive, shall require an additional groundwater level monitoring report to be submitted to and approved by PDS prior to the excavation in these areas. Monitoring of seasonal high groundwater elevation shall be performed monthly for sufficient duration to establish a maximum seasonal high groundwater elevation.
  - iii. A grading permit, to include Temporary Erosion and sedimentation Control Plan (TESCP), issued pursuant to SCC 30.63B shall have been obtained prior to excavation on any segment for construction of any access roads and sedimentation/infiltration ponds. Grading activity shall comply with IBC Chapter 18. The plan shall include the Best Management Practices to be used in the initial phase of operations until the construction of the siltration/infiltration ponds. An NPDES permit from the Washington State Department of Ecology will be required for this expansion. The internal daily mining and plant operation is not subject to a grading permit, but is considered part of the conditional use permit and the state DNR mining permit.
  - iv. A full drainage plan in conformance with SCC 30.63A shall be required prior to beginning excavation in any work area.
- E. All conditions imposed by the previous conditional use permits shall be maintained except for the following modifications:
- i. Condition I of the Hearing Examiner’s decision shall be modified to allow the importation of construction waste.
- F. The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department (Planning and Development Services) with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)
- G. Examiner’s Conditions
- i. All truck traffic and/or vehicle traffic shall not exceed 310 round trips per day.
  - ii. The following conditions should be added as the Examiner’s conditions regarding the reclamation operation. No other material may be processed as reclamation, except those listed as concrete, concrete with rebar, asphalt, dirt and brush. The reclamation operation shall be conducted in the location shown and on the concrete pads with the proper drainage as proposed in Exhibit 16G.

There shall be present at all times a representative of the applicant whenever material is being brought in and dumped for reclamation.

The reclamation facility shall not be any closer than 300 feet to the stream on the north part of the property.

The applicant shall comply with any and all conditions under local, state, or federal law as they may apply to the operation or reclamation facility.

- iii. PDS shall provide periodic reviews of the operations to insure that there are no violations of conditions.
- iv. Of the conditions heretofore imposed at the previous hearings, shall remain and shall be enforced with timely reports which are required to be filed. Furthermore, the reports and conditions as to water shall be such as to insure that there is no decrease in the supply of water to the property owners as a result of the operation of the gravel pit. PDS shall also monitor this pursuant to the reports required to be submitted, which at this point in time shall remain the same.
- v. The stop sign shall be placed on Highway 530 and maintained and complied with.
- vi. The other requests, as to hours of operation, and moving trucks off of the road may be modified as requested. However, the holidays shall be the same as the holidays observed by Snohomish County.

Nothing in this recommended approval shall excuse the applicant, owner, lessee, agent, successor or assigns from full compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project. In particular, no clearing, grading, filling, construction or other physical alteration of the site may be undertaken prior to the issuance of the necessary permits for such activities.

**DECISION:**

- 1) The SEPA appeal is hereby DENIED.
- 2) The request for the expansion of the gravel operation is hereby APPROVED, along with the reclamation facilities requested, SUBJECT TO compliance by the applicant with the conditions set forth in Conclusion 5, above.

Decision issued this 2nd day of August, 2006.

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Robert J. Backstein, Hearing Examiner

<p><b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b></p>
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This decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. (The Examiner's action on reconsideration would be subject to appeal to the Council.) The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council rules of procedure.

**Reconsideration**

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 2802 Wetmore Avenue, 2<sup>nd</sup> Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **August 14, 2006**. There is no fee for filing a Petition for Reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A Petition for Reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner's decision which could not reasonably have been produced at the Examiner's hearing; and/or
- (f) changes to the application proposed by the applicant in response to deficiencies identified in the decision.

Petitions for Reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the county file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved Party of Record. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **August 16, 2006** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the county and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner Findings, Conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the county file number in any correspondence regarding this case.

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Staff Distribution:

Department of Planning and Development Services: Paul MacCready  
Department of Public Works: Mark Brown

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.

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**This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than August 2, 2007.**

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
  - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
  - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

**ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS**

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of \_\_\_\_\_, \_\_\_\_\_.

Certified by:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)