

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**  
**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
 )  
**CONCRETE NOR'WEST** ) **FILE NO. 06 132038 LU**  
 )  
Major Modification to Conditional Use Permit )  
(ZA 9106224) to expand the existing gravel pit )

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DATE OF DECISION: April 18, 2007

DECISION (SUMMARY): The request for a major modification to conditional use permit ZA 9106224 to expand the gravel pit and to extend the permit duration is **CONDITIONALLY APPROVED with Preconditions.**

**BASIC INFORMATION**

LOCATION: The subject property, known as the Getchell Mine, is located at 154 84<sup>th</sup> Street NE, Lake Stevens. Access is on the north side of 84<sup>th</sup> Street NE, approximately ½ mile west of the intersection of 84<sup>th</sup> Street NE and 163<sup>rd</sup> Avenue NE and approximately two miles west of the town of Granite Falls.

ACREAGE: Existing: 140 acres  
CUP Expansion: 34 acres  
Total: 174 acres

ZONING: MC – MRO (existing)  
R-5 (proposed expansion area)

COMPREHENSIVE PLAN DESIGNATION:  
General Policy Plan Designation: Local Commercial Farmland (proposed expansion area)

UTILITIES:  
Water: Snohomish County PUD  
Sewer: Septic

FIRE DISTRICT: No. 1

## **INTRODUCTION**

The applicant filed the Master Application on September 6, 2006. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 15, 16 and 17)

A SEPA determination was made on February 22, 2007. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on April 3, 2007, the 89<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 3, 2007 at 10:05 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. The applicant was represented by attorney William Lynn. Snohomish County was represented by Erik Olson of the Department of Planning & Development Services. Vicinity residents Heather Robinson and Vince Jasper submitted pre-hearing documents (Exhibits 20 and 21 respectively) raising concern or opposition. Only Vince Jasper appeared and testified.

The hearing concluded at 11:13 a.m.

**NOTE:** For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

Based on all of the evidence of record, the following findings of fact are entered.

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 applicant, Concrete Nor'West (CNW) filed an application for a major revision to a conditional use permit (CUP) issued seven years ago on April 6, 2000, which had added 70 acres to the Getchell Mine gravel pit, which had existed on the site for the nearly 30 years since 1979. With that addition, the mine totaled 140 acres. The facility now includes wet mining sand and gravel, aggregate processing, equipment maintenance and concrete batch plant. The proposed revision to CUP 9106224 would add an additional 34 acres to the site, of which 29 acres would be used for mineral extraction (wet mining) east of the existing operation. The expansion does not intensify the other operations in any way: activity will continue at the same rate, using the same methods and equipment, but simply obtaining future supply from the additional 29 acres. For that purpose, the application also requests that the CUP expiration date be extended by 10 years from December 31, 2015 to that date in 2025.
3. Adjacent zoning is described fully in the staff report adopted by reference herein. No access for mining operations will occur from 163<sup>rd</sup> Avenue NE on the east, beyond which is R-5 zoning with a growing residential community. The same dredge equipment already approved seven years ago and used since will be used for materials mined in the expanded area and a 10-foot berm will be constructed around the entire perimeter of the expansion area. Thus, no significant off-site noise impacts are anticipated. It is found as fact that noise standards will be met provided hours of operation are adhered to as set out in the April 6, 2000 permit. The hours are restated in a condition upon approval herein to assure compliance. (See Exhibit 20, letter from vicinity resident Heather Robinson.)
4. It is undisputed in this record that naturally occurring levels of arsenic are high in the Granite Falls vicinity, including the subject site. Containing that arsenic requires protection of the groundwater and control of dust generated on the subject site. Vicinity resident Vincent Jasper raises concern about both of those issues as well as asserted overflow of the holding pond into the County ditch line along 84<sup>th</sup> Street NE (Getchell Road) and onto his property (Exhibit 21). The applicant's Dan Cox testified on direct examination to details about on site policy and practices toward compliance with dust requirements of the Puget Sound Clean Air Agency. The applicant's Exhibit 22 is a response in detail to the asserted flooding, noise, dust and water quality concerns. Without repeating that text, the Examiner finds as fact that Exhibit 22 resolves the issues in favor of the applicant. Vince Jasper testified to being generally satisfied with the written and oral responses to his concerns.
5. The PDS staff report has correctly 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). That report is hereby adopted by the Examiner as if set forth in full herein
6. The request will not generate impacts to the County's park system or the school system.
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 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 that review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
8. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC.

9. There are no critical areas within 100-feet of any proposed development and therefore this project is not subject to the requirements of Chapter 30.62 SCC.
10. The existing mine area of the subject property is designated Mineral Conservation-MRO, which allows the proposed use. A CUP for the use may be granted in an area designated Local Commercial Farmland if the requirements for a CUP are met, specifically those requirements set out at SCC 30.31D for conditional use permits in Mineral Excavation zones, as fully detailed in the staff report. The decision criteria at SCC 30.31.D.210 provides that the application "...shall not be denied..." unless the proposal will probably endanger the health, comfort, welfare or safety of the public..." as specified therein. The Examiner finds as fact that no such endangerment is demonstrated by a preponderance of the evidence of record.
11. The request meets the procedural requirements for the issuance of a CUP under Chapter 30.42C SCC, in particular the requirements for a major revision as set forth at SCC 30.42C.110. A review of these CUP standards with the request indicates that the standards are met and no adverse affects will be made to the area as a result of allowing a 29-acre expansion of the mine as proposed. Hours of operation are not revised and remain 7:00 a.m. through 5:30 p.m. Monday through Saturday. All original conditions from CUP ZA 9106224 remain in effect and are binding upon this approval except as stated in "Conditions" below herein.
12. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
13. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

## **CONCLUSIONS OF LAW**

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to specific conditions.
3. The request is consistent with the GMACP, GMA-based County codes, and the type and character of land use permitted on the site, the permitted density and the applicable design and development standards. Specifically, the proposal is consistent with GPP Policy 9.A.9, which allows permitting mineral extraction to expand an existing legally established mineral operation onto adjacent undesignated land where (as here) a portion of the existing site has been designated or zoned Mineral Conservation.
4. Adequate public services exist to serve the proposal. As conditionally approved, the proposal adequately provides for the public health, safety and general welfare. Modification of the original conditions as described in the "Conclusions" section of the staff report are embodied in the "Conditions" below herein.
5. For all of the above reasons, the requested expansion should be conditionally approved.

6. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

## **DECISION**

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a major modification to conditional use permit ZA 9106224 is **CONDITIONALLY APPROVED**, subject to the following pre-conditions and conditions:

### **PRE-CONDITIONS**

- A. Additional right-of-way connecting the intersecting right-of-way lines of 96<sup>th</sup> Street NE and 163<sup>rd</sup> Avenue NE with a thirty- five (35) foot radius curve shall have been deeded to the County.
- B. Additional right-of-way, parallel and adjacent to the right-of-way centerline of 163<sup>rd</sup> Ave NE shall be deeded to the County along the development's frontage such that 40 feet of right-of-way exists from centerline of the 163<sup>rd</sup> Ave NE right-of-way.
- C. Additional right-of-way, parallel and adjacent to the right-of-way centerline of 96<sup>th</sup> Street NE shall be deeded to the County along the development's frontage such that 30 feet of right-of-way exists from centerline of the 96<sup>th</sup> Street NE right-of-way.

### **CONDITIONS**

- A. Exhibits 9A through 9H shall be the official operational plans; any discrepancy between the content of the official operational plans(s) and the performance standards of Title 30 SCC shall be resolved in favor of the standard contained within Title 30 SCC; PROVIDED, that the maximum excavation depth shall be as shown on the official operation plans or 10 feet above the upper surface of the underlying glacial till layer, whichever is higher. Revision of the official operation plans is regulated by SCC 30.30.42C.110.
- B. All conditions from the April 6, 2000 Hearing Examiner's decision for conditional use permit ZA 9106224, with the exception of the revisions to conditions B, D, F.3 and S, shall remain in effect and shall be binding upon this approval.
- C. Condition B from the April 6, 2000 Hearing Examiner's decision for conditional use permit ZA 9106224 is revised to extend the expiration of the conditional use permit an additional 10 years and to establish a new expiration date of midnight on December 31, 2025.
- D. Because there are no critical areas within or adjacent to the expansion area, condition D from the April 6, 2000 Hearing Examiner's decision for conditional use permit ZA 9106224 is eliminated for this major revision, but will remain in effect for ZA 9106224 for the life of the permit.

- E. Condition F.3 from the April 6, 2000 Hearing Examiner's decision for conditional use permit ZA 9106224 is revised to have the required hog wire fence be located 15 feet from the outside toe of the berm.
- F. Condition S from the April 6, 2000 Hearing Examiner's decision for conditional use permit ZA 9106224 shall be eliminated for this major revision.
- G. Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.
- H. 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)

Decision issued this 18<sup>th</sup> day of April, 2007.

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Ed Good, Deputy Hearing Examiner

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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The 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 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **APRIL 30, 2007**. 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 Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application 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. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **MAY 2, 2007** 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 or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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 shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

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 the case.

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The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

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Staff Distribution:

Department of Planning and Development Services: Erik Olson

<p>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.</p>
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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 APRIL 18, 2008.**

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.

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**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)

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