

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Day Creek Sand and Gravel  
c/o Kevin Sullivan  
30881 South Skagit Highway  
Sedro-Woolley, WA 98284

**Agent:** Leonard Buidinot & Skodje, Inc.  
c/o Steven Grichel  
603 South First Street  
Mount Vernon, WA 98273

**File No:** PL05-0094

**Request:** Special Use Permit

**Location:** With a portion of Sec 30, T35N, R6E, W.M., adjacent to the site of the existing Day Creek Sand and Gravel Mine.

**Land Use Designation:** Rural Resource- Natural Resource Lands (Mineral Resource Overlay)

**Summary of Proposal:** To expand the existing approximately 30-acre gravel mine to the northwest, encompassing about 9 additional acres. Mining in the new area will occur over 5 to 7 years. The mining will take the ground level down to about 97 feet MSL to match the existing site's level.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on November 9, 2005.

**Decision:** The application is approved, subject to conditions.

## **FINDINGS OF FACT**

1. Day Creek Sand and Gravel (applicant) seeks a Special Use Permit to expand its existing gravel mine at 30881 South Skagit Highway.

2. The site zoned Rural Resource – Natural Resources Lands and is within a Mineral Resource Overlay (MRO). The location is within a portion of Sec 30, T35N, R6E, W.M. To the west of the site is Hendrickson Lane.

3. The proposed expansion is to the northwest of the current approximately 30-acre gravel mine. The expansion will create an additional mining site of approximately nine acres. An estimated 875,000 tons of material will be removed from the new site over a five to seven year period. The expansion area will be mined to an elevation of 97 feet MSL to match mining activities at the existing permitted site.

4. At present the site contains a vacant residential home, outbuildings and gardens. These will be demolished or moved before the mining activities commence. A 10-foot berm will be built around the perimeter of the site, using the top soil stripped from the site. The berm will be used to re-soil the reclaimed slopes.

5. The near vicinity is rural with sparse numbers of single-family residences to the east and southeast. The predominant zoning in the area is Agriculture – NRL to the north and Industrial Forest – NRL to the south. A 100-foot buffer will be maintained along the south property line adjacent to the expansion area.

6. The effect of the expansion will be merely to extend the life of the mine. The level of activity will not change. No new employees will be added. No new roads will be added. No new traffic will be generated. No additional parking needs will arise. The existing mine will simply expand into the new area.

7. Two existing employees will be working on the expanded site. Sewage disposal needs will not change and will be adequately handled at the existing mine office.

8. Work will be proceed on essentially the same schedule as at present – Monday through Saturday. Start and stop times will vary. The mined material will be transported to the existing mine area where it will be stored and sold.

9. No chemicals, waste oils, solvents, or fuel will be stored on the project site. The 10-foot berm should aid in noise attenuation as well as in reducing aesthetic impacts. No blasting will occur. Air quality standards enforced by Northwest Air Pollution Authority will be met.

10. The Notice of Development Application was posted, published and mailed the week of July 4, 2005. Notification was provided to all property owners within 300 feet of the subject property.

11. A single email was received during the comment period. The communication urged limits on the hours of operation, covering the loads of sand and gravel trucks, and appropriate environmental studies.

12. A Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued on September 15, 2005, with an appeal period ending on October 21, 2005. No comments were received. The MDNS was not appealed. The conditions added to the MDNS were standard requirements for compliance with applicable code provisions.

13. As part of Critical Areas review, a Hydrogeological Study, a Surface Drainage Analysis, and a Fish and Wildlife Reconnaissance and Wetland delineation were completed. The Hydrogeological study found that there is no reason to expect that the expansion of the mine as proposed constitutes a threat to the quality or quantity of the surface water and ground water resources of the area. Updated hydrogeological information was presented in August and approved by Staff on September 12, 2005.

14. The wetland/fish/wildlife report (February 15, 2005) identified wetlands connected to a larger system to the northeast of the subject parcel. Wetland buffer averaging is proposed to define the mining in a way that will not impinge upon wetland or buffer areas. A plan for this needs to be submitted and approved. A Protected Critical Area (PCA) will be established.

15. Comments from County department reviews are reflected in conditions of approval.

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

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy of surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) for special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource management and production will be minimized.
- (g) The proposed use is not in conflict with the health and safety of the community.

(h) The proposed use will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

17. The Staff reviewed the application in light of the above criteria and determined that, as conditioned, the proposal is consistent with them. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

18. SCC 14.16.440(10) contains specific operating criteria for Special Use Permits for mining operations within a Mineral Resource Overlay area. The proposal meets the operating standards for such permits. Although the new site area is not larger than 20 acres, the overall mine is already about 30 acres in size. The lot width meets the requirement to be greater than 500 feet. Buffer requirements will be satisfied. Noise levels will comply with state standards. Vertical limitations and aquifer protection standards will be met. No storage pond is proposed. All runoff will be contained within the excavation pit. No benching or terracing is proposed.

19. Reclamation will be in accordance with the requirements of the state law as administered by the Department of Natural Resources.

20. Under SCC 14.16.440(9) special approval criteria are set forth for Hearing Examiner review for mining operation requiring Special Use Permits. The Examiner is to consider conditions that will mitigate detrimental impacts to the environment and that will protect the general welfare. The permit is to be granted if the impacts are mitigatable. The Examiner has determined that the conditions proposed here will adequately mitigate any adverse impacts and will adequately protect the public health, safety and welfare.

21. One member of the public testified at the hearing. She wanted to make sure that an existing easement held by her family is not affected by this action.

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

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding.

2. The requirements of SEPA have been met.

3. Expansion of existing mining operations is allowed provided the owner applies for and receives a new mining Special Use Permit. SCC 14.16.440(3)(c).

4. As conditioned, the proposed operation will meet both the special and general criteria for Special Use Permit approval. SCC 14.16.900(2)(b)(v), SCC 14.16.440.

5. The approval of this permit will have no effect on existing private property rights held by others, including any easements.

6. Under the facts, the Hearing Examiner is without authority to impose more limited hours within the natural resource lands involved. SCC 14.16.440(10)(i).

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

### **CONDITIONS**

1. The applicant shall conduct the expanded mining operations essentially as described in the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all necessary land use approvals or permits required by federal, state and local government and comply with the conditions thereof.

3. The applicant shall comply with the conditions of the MDNS issued on September 15, 2005.

4. The applicant shall obtain all necessary approvals from the Department of Natural Resources, including a Surface Mine Reclamation Permit.

5. Operation hours shall remain in compliance with SCC 14.16.440(10)(i).

6. Only dry screening shall be permitted. Wet screening, if desired, shall require a permit modification.

7. Mining is not permitted below 97 feet MSL.

8. If any pit operations or dewatering of a pit impairs a neighboring well or other water source, the pit owner shall replace the impaired well or source or develop a water system to supply the water provided by the source.

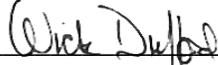
9. For wells, of any manner of construction, that are located within the potential expansion area of the proposed pit, and that will be impacted (excavated out) by the operation, the applicant must meet Department of Ecology requirements.

10. There shall be no increase in the number of employees associated with the proposed mine expansion.

11. There shall be no blasting in association with the mining of the expanded area.
12. A buffer averaging plan meeting the requirements of SCC 14.24.240(5)(b) shall be submitted and approved. Appropriate PCA signs shall be located on the site.
13. A Protected Critical Area (PCA) Easement Agreement shall be submitted and approved.
14. Activities under this Special Use Permit shall be started within two years of final approval. If abandoned for a period of one continuous year, the permit shall be void.
15. Failure to comply with any permit condition may result in permit revocation.

### **DECISION**

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

  
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Wick Dufford, Hearing Examiner

Date of Action: December 9, 2005

Date Transmitted to Applicant: December 9, 2005

### **RECONSIDERATION/APPEAL**

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.