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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: Order on Special Use Permit SL 01 0560

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: Shamrock Lands, Inc. (Bill Vaux)

ASSESSOR PARCEL NO: P42379, P106595, P102187

ABBREVIATED LEGAL DESCRIPTION: the project is located at 40567 Baker Lake Road, Concrete, WA; a portion of Section 10, Township 35 North, Range 7 East, W.M., Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Bill Vaux
Shamrock Lands, Inc.
P. O. Box 807
Burlington, WA 98233-0807

File No: PL00-0436

Request: Special Use Permit

Location: A 39.33 acre site within a portion of Sec. 10, T35N, R7E, WM. The project site is about 700 feet northwest of the intersection of SR 20 and Baker Lake Road on a plateau above the valley of the Skagit River.

Summary of Proposal: To mine gravel from 31 acres of the site and to screen and crush sand and gravel products. A portable aggregate crushing/screening plant will be used in the mine and eventually conveyors will be installed. The project includes an office/shop complex in the northwest corner of the property where a truck scale, equipment storage, and parking will also be located. Fuel storage tanks will be maintained in the office/shop area and in the mine.

Land Use Designation: Rural Resource-Natural Resource Lands and Secondary National Forest-Natural Resource Lands, with a Mineral Resources Overlay.

Public Hearing: After reviewing the report of the Planning and Permit Center, the Hearing Examiner conducted a public hearing on April 24, 2002.

Decision: The application is approved, subject to conditions.



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FINDINGS OF FACT

1. Shamrock Lands, Inc. (applicant) seeks a Special Use Permit to establish a gravel mining and processing operation on a plateau above the Skagit River situated just northwest of the intersection of SR 20 and the Baker Lake Road. The operation will be known as the Birdsvew Mine.

2. The property is located within a portion of Sec. 10, T35N, R7E, WM. The address is 40567 Baker Lake Road. The property, however, does not abut Baker Lake Road, but rather is reachable via a circuitous route that for much of its length follows an old Puget Sound and Baker River Railroad grade that intersects the Baker Lake Road some 2 miles north of SR 20. This is a 3.2 mile stretch of private road that extends southwesterly along the railroad right-of-way until it runs into to a Puget Sound Energy powerline road that runs easterly and eventually enters the mining site's northwest corner.

3. The project area is about 39.33 acres in size and consists of a gravel terrace about 100 feet above the river valley. Baker Lake Road lies across some intervening parcels to the east. On the east side of this road, Grandy Creek runs southerly toward the Skagit River. The project site has been used only for silviculture in the past, and has been logged in anticipation of mining. No structures currently exist there.

4. Approximately 31 acres of the site will be mined. A portable crushing/screening plant will be installed on the mine floor and mined product will be processed there. No gravel washing is proposed. Initially, the rock will be transported to the crusher via front-end loader. When the distance between the working faces and the crusher becomes too great for economical transport, a conveyor system will be installed.

5. Electric transmission lines on associated right-of-way cut across the northwest portion of the property. In the northwestern corner, thus isolated, the plan is to locate a fenced and gated office/shop complex. A road running along the west side of the site will connect this complex to the mine area to the south. The office/shop area will cover slightly more than 2 acres and will include a truck scale, a maintenance/storage building (less than 2,500 square feet), caretaker's quarters/office (a doublewide manufactured home of around 1,400 square feet), ten employee parking spaces, and a truck parking area. A 1,200-gallon double-walled fuel storage tank will be maintained in this area for fueling of front-end loaders and bulldozers. Another such tank will be placed on the bottom of the mine. Trucks will fueled off-site.

6. The office/shop area will be surfaced with two inches of crushed rock and will include a gravel entrance road. The gate will be closed and the area will be locked when employees leave the site. Telephone service, electricity, an approved potable water



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system and an on-site septic system will all be installed within the complex. Water will be supplied from a well in the northwest corner of the property.

7. An emergency route for access to SR 20 to the south will be provided. However, trucks hauling product from the mine will use the 3.2 mile northerly access road. This route will be widened, consistent with wetlands protection concerns, and surfaced with two inches of crushed rock.

8. The project is anticipated to last about 12 years. It will be carried out in three major operational phases. The first phase will involve various preparatory construction (road improvements, the office/shop complex) and initial mining. The original ground level is at an elevation of about 300 feet. Phase one will take this down to 250 feet. In the second phase, the mine floor will be brought down to about 210 feet, and in the final phase the floor elevation will reach 180 feet. The ultimate depth may be subject to some adjustment, because of the necessity to maintain a separation of at least 10 feet above the seasonal high ground water table.

9. Except for ingress and egress, a 100-foot setback will be maintained from the property lines. The initial mining in the west central portion of the site will involve digging down to sufficient depth to install the portable screening/crushing plant below a noise-abatement berm. The crushing plant will be moved progressively to lower elevations as the mining proceeds. The noise-abatement berm will be maintained until the final phase.

10. Aggregate will be trucked from the site each day, Monday through Saturday. Initially, there will be a maximum of 25 truck-trailer loads daily. As the mine deepens this will ultimately increase to a maximum of 50 truck-trailer combinations per day.

11. Prior to mining, existing topsoil, approximately one foot deep, will be stripped and stockpiled for use on reclaimed slopes. Reclamation will be ongoing and progressive throughout the life of the project.

12. Surrounding land uses are not likely to be significantly disturbed by the mining activity. There are scattered residences to the northeast and east of the property and on the valley floor to the south. The two closest homes are about a quarter mile from the northeast site corner. The design of the project is to provide a barrier at all phases to shield these homes from noise. Land to the west and north is owned by the Trillium Corporation and is commercial forestland. The Washington State Department of Transportation (WSDOT) owns an inactive surface mine contiguous to the northeast site boundary.

13. Critical area review of the site was conducted and two subjects of concern were identified -- geological hazard and aquifer recharge. A slope stability evaluation was conducted and no evidence of recent or historic slope instability was observed. The review concluded that the south-facing slope on the site is a landslide hazard based solely



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on slope steepness. A recommendation was made that a 30 foot buffer be maintained from slopes exceeding 30 percent and this was included in the project design. The landslide hazard area and buffer shall be included within a Protected Critical Area (PCA) recorded with the County auditor.

14. Logs from water wells in the area were reviewed, test well holes were drilled at the mine site, and an analysis was made of the probable effects of the project on groundwater resources. The report concludes that the regional water table probably lies 10 to 20 feet below the expected depth of gravel mining. The project is not likely to adversely affect discharge to local aquifers, Grandy Creek or the Skagit River. Well monitoring will be carried out during the project so that impacts can be evaluated and the relationship of the mine floor to the regional water table can be determined.

15. A study of the effects of the project on stormwater drainage was conducted and it was concluded that there will be no adverse off-site stormwater effects. The mine pit will be capable of infiltrating the 100 year storm. Spill control measures will adequately protect against possibilities of surface or ground water contamination.

16. A professional noise study determined that predicted noise levels from mining operations will not exceed regulatory maximums at off-site receiver sites. The project-related off-site traffic noise is not subject to state noise regulations, but was nonetheless evaluated. Predicted traffic sound levels along the haul route will be considerably less than the WSDOT substantial increase criterion.

17. Likely traffic impacts were analyzed and, as a result, various access road improvements have been incorporated into the project. The traffic volumes anticipated are not expected to adversely affect levels of surface on any public roads.

18. Recommendations produced by reviews of the application by various County departments are reflected in conditions of approval.

19. A Mitigated Determination of Non-Significance (MDNS) was issued under the State Environmental Policy Act (SEPA) was issued on January 29, 2002. The MDNS was not appealed. The conditions of the MDNS are incorporated into the permit approval conditions.

20. The general criteria for Special Use Permit Approval are set forth in SCC 14.16.900(2)(b)(v).

- (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 standard of SCC 14.16.840.



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- (d) The proposed use will not generate intrusions on privacy or surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) For special uses in Industrial Forest-NRL, Secondary Forest-NRL, Agricultural-NRL, and Rural Resource-NRL, the impacts on long-term natural resources 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.

21. The Staff Report, prepared by Linda Kuller for this application, very thoroughly analyzes the project in light of the above criteria and determines that, with appropriate, conditions, the project will be consistent with them. The Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

22. Proper notice concerning the application and the hearing was given. There was no public comment about this project in the permit file and no public testimony about it at the hearing.

23. 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. Extracting and processing minerals is allowed by Special Use Permit on properties within Secondary Forest and Rural Resource Natural Resource Lands categories that are also within a Mineral Resource Overlay. SCC 14.16.440(4)(d), SCC 14.16.430 (4)(g), SCC 14.16.440(7)

4. SCC 14.16.440(9) sets forth review standards in addition to the normal special use permit criteria. The central idea of these additional standards is that mining permits should be granted if the environmental impacts are "mitigatable." Conditions of approval are to be based on performance standards that:

- (i) Are directly and proportionately related to limiting surface mining impacts;



- (ii) Are reasonable, practicable and generally capable of being achieved by the mine operator; and
- (iii) Take into consideration existing and available technologies applicable to mining operations; and

The Hearing Examiner is to consider the various performance standards imposed by the zoning code to be minimums. These include requirements for compatibility with activities on adjacent parcels, for stormwater and erosion control, and for non-interference with recreation. Specific requirements are forth for site area, buffers, noise levels, blasting, aquifer protection, surface water protection, back-sloping of benches, and reclamation.

5. The Examiner concludes that the impacts of the proposed mine are "mitigatable," that the performance standards required are appropriate, and that the conditions imposed meet the minimums specified in the Code
6. The findings support a conclusion that the proposal, as conditioned, also meets the general special use criteria of SCC 14.16.900(2)(b)(v).
7. A more detailed analysis of the conformity of this proposal with applicable approval standards is contained in the Staff Report which analysis the Examiner adopts.
8. The following conditions of approval should be imposed.
 - (1) The applicant shall construct and operate the mine and associated facilities as described in the application materials, except as modified by these conditions.
 - (2) The applicant shall obtain all necessary land use approvals and comply with the conditions thereof.
 - (3) The applicant shall comply with the requirements of Chapter 173-201A (Surface Water Quality Criteria) Chapter 173-200 (Ground Water) and Chapter 173-60 (Maximum Environmental Noise Levels).
 - (4) The applicant shall comply with the noise mitigation measures outlined in the Sound Analysis Report, dated June 21, 2000, by Bruck, Richards and Chaudiere, Inc.
 - (5) At the time of building permit application, proof of availability of adequate potable water shall be provided.
 - (6) Public restrooms shall be reviewed and approved by the County Health Department.
 - (7) Onsite sewage disposal shall be approved prior to the issuance of a building permit. Industrial wastes shall be kept out of the sanitary sewage waste stream.



(8) Temporary erosion/sedimentation control measures shall be employed consistent with Chapter 14.32 SCC (Drainage).

(9) The applicant shall comply with relevant Northwest Air Pollution Authority requirements.

(10) The applicant shall comply with the requirements of SCC 14.16.440(10). (Mineral Resource Overlay Operating Standards).

(11) The applicant shall comply with Chapters 14.24 SCC (Critical Areas) and 14.16 SCC (Zoning).

(12) Mining operations shall be subject to biannual inspections, as required by the Mine Safety and Health Administration, U.S. Department of Labor.

(13) A Hazardous Material Management Plan shall be required as outlined in Addendum #2 of the Birdview Mine Stormwater Drainage Study, dated December 4, 2001 (Skagit Surveyors). The building permit for the maintenance shop shall be conditioned to require that such a plan be posted in the shop prior to occupancy. The plan shall include such items as:

- Type and amount of sorbent to be available.
- Method of disposal of contaminated sorbent.
- Directions for gas and diesel spills (spread and let evaporate or remove contaminated soil and dispose of property).
- Directions for oil spills (remove and properly dispose of contaminated soil).
- Check fuel tank contaminant leak indicators (if tank has leak, replace tank).

(14) The applicants shall comply with the State Department of Ecology's regulations related to above ground storage tanks.

(15) The applicant shall not disturb hydrological barriers or penetrate groundwater bodies, perched or otherwise, and shall comply with the proposal for additional hydrological investigations during mining sequences outlined in the permit application, as well as the recommendations in the hydrogeologic reports for this project, prepared by L & W Associates, dated August 4, 1999.

(16) Copies of hydrogeologic investigation reports prepared to determine the static water level in relation to mine depth when mining approaches 244 feet above sea level in the vicinity of Drill Hole 1 in the northeast site corner and 235 feet above sea level in the vicinity of Drill Hole 2 in the northwest corner shall be provided to the Planning and Permit Center for review. The copies shall reference file PL00-0436.

(17) The applicant shall implement a groundwater monitoring program developed by a geologist or hydrogeologist licensed in Washington. The program shall evaluate



impacts to neighboring water wells resulting from the permitted activities. The program shall, at a minimum, include the recommendations set forth in the letter report of Pacific Groundwater Group, dated May 1, 2001. The program shall include the monitoring of onsite and offsite wells on an annual basis. A monitoring report, referencing file PL00-0436, shall be submitted to the Planning and Permit Center one year after mining begins. County review of the report may be undertaken by the County hydrogeologist or a consultant, at the County's discretion. Should the review indicate the potential for significant impacts on neighboring wells, the Special Use Permit shall be referred to the Hearing Examiner for review pursuant to SCC 14.06.050(1)(b)(iv).

(18) The applicant shall obtain all necessary approvals from the State Department of Natural Resources, including a Surface Mine Reclamation Permit, pursuant to Chapter 78.44 RCW.

(19) The application shall implement all mitigation measures outline in Traffic Study for Birdsvew Mine, as amended; and the follow-up letter dated November 20, 2001, by Gibson Traffic Consultants. This mitigation includes onsite and access improvements, as follows:

- Construct proposed access intersection onto Baker Lake Road to County design/construction standards. Note: a crushed rock surfacing for the internal access road has been deemed acceptable to County staff. GTC recommends a minimum access approach width of 30 feet.
- Provide a minimum turning radius of 55 feet for the right-turn exiting movement at the proposed Baker Lake Road access intersection.
- Provide standard "STOP" sign at the proposed access approach to Baker Lake Road.
- Widen the internal access road, where substandard widths exist to a minimum width of 20 feet or provide additional turnouts as needed.
- Convert the existing SR-20 access to "emergency access only" to minimize traffic and safety impacts to existing residents. Place signs to this effect.
- Provide at least 10 parking spaces onsite to accommodate peak parking needs for employees, visitors and delivery trucks.

(20) Fuel storage and dispensing shall be allowed after obtaining a permit in compliance with the Uniform Fire Code and state law.

(21) All proposed roadway improvements (onsite and offsite) shall meet the requirements of the County Road Standards and Chapter 14.32 SCC.

(22) The applicant shall submit a landscape plan for review and approval at the time the first building permit is submitted for the office/shop complex. The plan shall be consistent with SCC 14.16.830.

(23) The applicant shall submit a copy of this decision with the building permit application.

(24) The applicant shall submit a storm drainage report consistent with Chapter 14.32 SCC with the building permit application.

(25) At the time of application for building permits, internal access roads serving the proposed buildings shall meet the Skagit County Emergency Vehicle Access Standards. The roads shall meet the Access Road Standards, not the Driveway Standards.

(26) At the time of building permit application review, requirements for fire flow and fire hydrants shall be determined by the Fire Marshal. The requirements shall be based on building size, type of construction, and use.

(27) Upon occupation of the mining site, an inventory of any substances or structures that could initiate a fire, or pose a hazard to fire fighters, shall be given to the Fire District, and any changes or updates shall be provided as necessary. Use, storage, and handling of diesel fuel, engine oil, and lubricants shall be performed in accordance with applicable State and County fire codes, including specifically Chapter 19.27 RCW, State Uniform Fire Code. All relevant Uniform Fire Code Standards shall be met by the project.

(28) Plans shall be submitted and a Mechanical Permit shall be obtained for the installation of permanent tanks. Non-permanent tanks shall be approved by WSDOT.

(29) Prior to the commencement of mining operations, Fire District No. 10 shall be provided keys for all security locks to ensure immediate emergency access into the site.

(30) Prior to commencement of operations, an approved and recorded Protected Critical Area easement shall be submitted for the Planning and Permit Center, referencing file PL00-0436.

(31) Prior to commencement of operations, a recorded Low Flow Mitigation Agreement shall be submitted to the Planning and Permit Center, referencing file PL00-0436.

(32) All easement agreements submitted with the Special Use Permit application and any necessary easements required across Lots 1 and 2 to provide access to Lot 3 shall be recorded with the County auditor. Copies of such recording shall be submitted to the Planning and Permit Center, referencing file PL00-436.

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



DECISION

The Special Use Permit is approved, subject to the conditions of approval set forth in Conclusion 8 above.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: June 3, 2002

Copy Transmitted to Applicant: June 3, 2002

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center 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 the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.

