

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: September 28, 2005

APPLICANT/
LANDOWNER: IRON MOUNTAIN QUARRY

FILE NO.: 05 119595

TYPE OF REQUEST: Major Modification to an existing Conditional Use Permit to increase reserves and area. Also, a variance to eliminate the buffer adjacent to a neighboring quarry required for 30.31D.120

DECISION (SUMMARY): APPROVED

BASIC INFORMATION

GENERAL LOCATION: The property is located at 20800 Wayside Mine Road, Granite Falls, WA

ACREAGE: 200 acres

ZONING: Mineral Conservation (MC) and Forestry (F)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation:	Low Density Rural Residential (1 du/20 ac)
Pre-GMA Subarea Plan:	Granite Falls
Subarea Plan Designation:	Forestry

UTILITIES:

Water:	PUD No. 1 of Snohomish County
Sewage:	N/A

SCHOOL DISTRICT: Granite Falls

FIRE DISTRICT: No. 17

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services:	Approval subject to conditions
Public Works:	Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on May 12, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on September 7, 2005 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 17, 18 and 19)

A SEPA determination was made on August 12, 2005. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on September 14, 2005, the 99th 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 September 14, 2005 at 1:24 p.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. Mr. Jim Burnett, representing the applicant appeared and explained the proposed expansion and how the area was being used.
3. Ms. Molly Lawrence also appeared representing the applicant.
4. Mr. Tom Barnett appeared, representing PDS.
5. No one appeared in opposition to the request, no were any letters received in opposition to the request.
6. The Examiner asked Mr. Burnett if they operated any equipment in the evening and he indicated that they do not, nor have they.

The hearing concluded at 1:40 p.m.

NOTE: The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the 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 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) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.

3. No letters were received in opposition to the request, nor did anyone appear in opposition.
4. The request is for a Conditional Use Permit (CUP) to expand an existing rock quarry. It is submitted as a major modification to the existing CUP (PDS file no. ZA 9306125) to allow the excavation of the quarry floor from the current minimum of 875 feet above sea level, down to 575 feet above sea level. The request also includes an expansion of 70 acres and a variance to the side yard setback found at 30.31D.120. The proposal itself is fully described in Exhibit 3.
5. The modification request is intended to expand the life of the quarry, rather than increase production. The quarry itself has been operating in substantial compliance with county regulations for a number of years and as a result there are no identified issues of concern.
6. The request indicates that there will be no new traffic generated and as a result the Washington State Department of Transportation (WSDOT), Northwest Region, indicates the development will not have a significant adverse traffic impact upon state highways and therefore there is no request for traffic mitigation. (See Exhibit 27)
7. The GPP Future Land Use Map designation is Low Density Rural Residential and the property is zoned F and MC. The proposed use is allowed as a conditional use in the F zone and in the MC zone. The existing quarry has been operating in compliance with the noise control ordinance for quite some time and is therefore in the position to continue operating under the major modification pursuant to Chapter 10.01, the noise control ordinance.
8. Chapter 30.31D SCC provides in Section 100 – General Performance Standards comply with a number of conditions. The PDS staff report has reviewed this and this review is found on pages 3-8 of the PDS staff report. (Exhibit 35) This analysis is hereby accepted by the Examiner as set forth therein.
9. Chapter 30.42C SCC also sets forth the requirements for a Conditional Use Permit. These requirements and the analysis which follows in the staff report, and is found on pages 8-11 of the staff report, have been reviewed by the Examiner and found to be correct and are hereby adopted as if set forth in full herein, in order to avoid needless repetition.
10. The aerial photograph set forth on Exhibit 14 very clearly shows the proposed area and how it fits into the surrounding property.
11. The variance to SCC 30.31D.120 authorizes excavation up to the common boundary with the Meridian Aggregate's quarry depicted by Exhibits 4A and 4D. It is reasonable to allow this variance between the two quarries as there is no adjacent property to protect. General Condition D provides for the standards for granting of this variance.
12. 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.
13. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS:

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, except for review condition.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain 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 and the permitted density with the applicable design and development standards.
4. The request for a modification to the existing Conditional Use Permit is a reasonable request and the applicant should be commended for operating the quarry in such a manner as to have the least impact upon the area and surrounding properties such as to have no complaints submitted.
5. The request should be approved subject to compliance by the applicant with the following Precondition and Conditions:

General Conditions

- A. The conditions set forth herein supersede in their entirety any and all conditions imposed under County File Numbers ZA 8606158 and ZA 9306125 and shall hereafter regulate under authority of Chapters 30.31D and SCC 30.42C SCC all excavation and quarrying activities conducted on the property.
- B. This permit is issued pursuant to SCC 30.22.110 to authorize quarrying of rock, the primary processing of rock, and the storage of explosives. Commercial excavation and/or exportation of sand, gravel, pit run or topsoil/overburden is not authorized by the instant permit. Importation of sand, gravel, pit run, topsoil, overburden, rock or any other similar natural or man-made material is not authorized by the instant permit.
- C. Exhibits 4A through 4D shall be the official site development plans; any discrepancy between the content of the official site development 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 development plans is regulated by SCC 30.42C.110.
- D. The variance to SCC 30.31D.120 authorizes excavation up to the common boundary of the Meridian Aggregates Quarry as depicted by Exhibits 4A through 4D; provided that this variance may not be used unless a corresponding variance has first been obtained by the owner/operator of the abutting Meridian Aggregates Quarry. The standard requirement of SCC 30.31D.120 shall apply until such corresponding variance has been acquired.
- E. A temporary residence for a caretaker shall be allowed to be located on the subject property subject to Snohomish Health District and Department of Planning and Development Services approval.
- F. Nothing in this permit/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 undertaken prior to the issuance of the necessary permits for such activities.

Operational Conditions

- G. All conditions of SCC 30.31D as now or hereafter amended, shall be complied with in the operation of the quarry, provided that:
 - i. SCC 30.31D.100(3) is amended to provide that:
 - (a) Loading and hauling may begin at 6:00 a.m., Monday through Saturday.
 - (b) When requested by an agency of the federal, state or local government to provide rock for emergency operation, the permittee may quarry, process and /or haul rock as necessary to meet the governmental emergency request.
 - ii. The requirements of SCC 30.31D.150 are not applicable since there will be no underground or shaft mining occurring on the subject property.
- H. Any security or other exterior lighting shall be placed and aimed so as to not shine on residential properties.
- I. A five foot high fence, constructed of three strands of barbed wire or its equivalent, shall be erected around the operational area of each phase wherever a cut of 20 feet or more exists. Said fence shall be no closer than 25 feet to the edge of the operational face and shall have signs, meeting the requirement of SCC 30.31D.100(5), warning of the danger affixed thereto.
- J. A vibration monitor shall be employed in the vicinity of the shop building whenever blasting occurs. Records of the results of the monitoring shall be kept by the permittee for the life of the permit and shall be made available for county review, inspection and copying upon request by the county.
- K. A full drainage plan shall have been submitted and approved pursuant to Chapter 30.63A SCC prior to the initiation of excavation/quarrying operations within the 70 acre expansion area.
- L. The existing performance bond in the amount of \$25,000 shall be retained and continually kept in force during the duration of this permit and shall not be released prior to the termination of this permit; provided that said bond shall be released if the Department of Natural Resources provides Snohomish County with a written notice that said bond is contrary to RCW 78.44.087.
- M. All references to sections within the Snohomish County Code are current as of the date of this decision. Should the county code be amended in the future in such a fashion that said references do not contain the same substantive material as they do now, code references contained herein shall be assumed to have likewise changed.
- N. The applicant is to be especially commended for its operations of the quarry so as not to have received complaints or opposition. However, many of the standards in the conditions are very broadly referred to in the PDS staff report by citing the statutes themselves. Questions may arise in the future as to how the application of these conditions to this modification of the existing conditional use permit, supercede any and all previously imposed conditions. Therefore, the Hearing Examiner hereby imposes a condition requiring PDS to annually review the operation to insure that the conditions imposed are being complied with, and, if not, to bring the matter back to the Hearing Examiner for determination.

- O. 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)
6. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for a Modification of the Conditional Use Permit 9306125 and Variance from the buffer requirements as submitted are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 5, above.

Decision issued this 28th day of September, 2005.

Robert J. Backstein, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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, 2nd Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **October 10, 2005**. 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 **October 12, 2005** 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.

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.

Staff Distribution:

Department of Planning and Development Services: Tom Barnett
 Department of Public Works: Andrew Smith

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.