BEFORE THE HEARING EXAMINER
FOR THE CITY OF PORT ORCHARD

In the Matter of the Application of

Norman P. Olson, N.L. Olson & Associates, on behalf of
Warren Lumsden, for RV Associates, Inc.

For a Conditional Use Permit

No. CUP 040-13

FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to expand the RV Associates, Inc., sand and gravel mine to allow the removal of approximately 300,000 cubic yards of material at 1475 Lumsden Road, Port Orchard, Washington, is APPROVED. Conditions are necessary to mitigate specific project impacts.

SUMMARY OF RECORD

Hearing Date:
The Hearing Examiner held an open-record hearing on the request on January 30, 2014. The hearing record was open until February 4, 2014, to receive a copy of the City’s lease with the Port Orchard Industrial Park.

Testimony:
The following individuals presented testimony under oath at the open-record hearing:

Tom Bonsell, City Associate Planner
Andrea Archer-Parsons, P.E., City Assistant Engineer/Stormwater Manager
Norman Olson, P.E., Applicant Representative
Dan Wolfard, R.V. Associates, Inc., Operations Manager

Exhibits:
The following exhibits were admitted into the record:
2. Application submittal, including the following documents:
   A. Conditional Use Permit Application, received October 28, 2013
   B. Contact Information, dated October 20, 2013
   C. Property Owners List Verification, dated October 20, 2013, with 300-foot radius property owners map and mailing list of surrounding property owners
   D. Legal descriptions and tax parcel numbers, received October 28, 2013
   E. Project Narrative, received October 28, 2013
   F. Statement addressing code criteria for Conditional Use Permit, received October 28, 2013

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H. Environmental (SEPA) Checklist, dated October 16, 2013
I. Plan Set: Port Orchard Industrial Park RV & Associates Surface Gravel Mine
   i. Cover Sheet (Sheet 1 of 5), received October 28, 2013
   ii. Existing Conditions (Sheet 2 of 5), dated March 12, 2013
   iii. Segment Excavation Plan (Sheet 3 of 5), dated March 12, 2013
   iv. Segment 2 Excavation Plan (Sheet 4 of 5), dated March 12, 2003
   v. Reclamation Plan (Sheet 5 of 5), dated March 12, 2003
3. Kitsap County Parcel Records: Property Reports and Maps, undated
5. Comment memo from Andrea Archer-Parsons, City Assistant Engineer/ City Stormwater Manager, dated November 12, 2013
10. Affidavit of Mailing & Posting of NOA/SEPA, dated November 25, 2013, with mailing list
11. Comment letter from Kitsap Public Health District, Keith Grellner, Environmental Health Director, to Ellen Ferguson, dated December 2, 2013
12. Comment letter from Coire McCabe, WA State Dept. of Natural Resources, to City, dated December 4, 2013
13. Dept. of Natural Resources Application for Reclamation Permit, dated December 20, 2013
15. MDNS distribution record to agencies and interested parties, dated January 3 2014
16. Email from Thomas Bonsell to Norm Olson, dated January 3, 2014
17. Slope Easement, recorded October 18, 1999
19. Affidavit of Mailing and Posting Hearing Notice, dated January 17, 2014
20. Email of Hearing Notice to Interested Parties, dated January 21, 2014
21. Staff Report, prepared by City Associate Planner Tom Bonsell
22. Port Orchard Industrial Park lease with City, dated October 15, 1999

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:
FINDINGS

Application and Notice

1. Norman P. Olson, P.E., for N.L. Olson & Associates, Inc., on behalf of Warren Lumsden of RV Associates, Inc. (Applicant),\(^1\) requests a conditional use permit (CUP) to expand the RV Associates, Inc., sand and gravel mine to allow the removal of approximately 300,000 cubic yards of material at 1475 Lumsden Road, Port Orchard, Washington.\(^2\) Exhibit 2.A; Exhibit 2.B; Exhibit 2.I; Exhibit 4; Exhibit 21, Staff Report page 1.

2. The City of Port Orchard (City) determined the CUP application was complete on November 13, 2013. The City published Notice of the Application in the *Port Orchard Independent* on November 22, 2013. The City mailed notice of the application and the State Environmental Policy Act (SEPA) threshold determination to surrounding property owners and posted notice on the subject property on November 25, 2013.\(^3\) The City mailed notice of the open record hearing associated with the application to surrounding property owners, posted notice on the subject property, and published notice in the city newspaper of record on January 17, 2014. Exhibit 7; Exhibit 9; Exhibit 10; Exhibit 18; Exhibit 19; Exhibit 21, Staff Report, pages 5 and 6.

State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impact of the proposal, as required by the State Environmental Policy Act (SEPA), chapter 43.21C RCW. The City reviewed the Applicant’s SEPA Environmental Checklist and other available information. The City used the optional Determination of Nonsignificance process under WAC 197-11-355 and provided notice as part of the Notice of Application. The City determined that, with four conditions, the proposal would not have a probable significant adverse impact on the environment and issued a Mitigated Determination of Nonsignificance (MDNS) on January 3, 2014. The four conditions include meeting Washington State Department of Transportation (WSDOT) backfill standards; marking the limits of the gravel operation by field survey; compliance with Kitsap County Board of Health Ordinance 2010-1, Solid Waste Regulations; and reporting any encounters of old, buried solid waste to the Health District. The MDNS was not appealed. Exhibit 2.H; Exhibit 8; Exhibit 14; Exhibit 15; Exhibit 21, Staff Report, page 5.

4. In response to an inquiry from the Hearing Examiner about compliance with the MDNS conditions, Andrea Archer-Parsons, P.E., City Assistant Engineer/Stormwater Manager,

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\(^1\) Norman P. Olson, P.E., is authorized to act as agent for Warren Lumsden of RV Associates, Inc., property owner. Exhibit 2.B.

\(^2\) The subject properties are identified by tax parcel numbers 5491-000-003-0002, 5491-000-002-0003, 5491-000-001-0004, and a portion of 342401-3-015-2004 and 342401-3-035-2000. A legal description of the property is provided in Exhibit 2.D. Exhibit 2.D; Exhibit 21, Staff Report, page 1.

\(^3\) The Notice of Application was initially mailed on November 22, 2013, with an incorrect date for the comment period. Notice with the correct date was mailed and posted on November 25, 2013. Exhibit 10.

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testified that the WSDOT backfill standards are online and are required to accommodate future development. She testified that a field survey means either fencing or flagging the property before additional excavation is carried out. She requested that these MDNS conditions be made conditions of the CUP. *Testimony of Ms. Archer-Parsons.*

**Comprehensive Plan and Zoning**

5. The subject property is designated Employment-Industrial/Office (Eo) by the City Comprehensive Plan (Comprehensive Plan). The intent of the Eo designation is to provide for the location and grouping of industrial and related enterprises, and activities involving manufacturing, assembly, fabrication, processing, bulk handling and storage, research facilities, warehousing, and heavy trucking. City staff identified the following Comprehensive Plan goals and policies as relevant to the proposed use: POLU-48 and 49 (Land Use), to provide opportunities for light industrial and high technology uses and to encourage and support locations for businesses providing primary jobs in Port Orchard industrial park, and ECON-1-8 (Economic Development), to support a diversified economy that provides living wage jobs, encourages economic growth and diversification, and increases the number of primary jobs. *City Comprehensive Plan, Land Use Element (December 2011), page 2-12; Economic Development Element, pages 6-3 to 6-4.* Exhibit 21, Staff Report, page 2.

6. A majority of the subject property is located in the City’s Employment-Industrial/Office (Eo) zoning district. The purpose of the Eo zoning district is to provide for the location and grouping of industrial and related enterprises, and activities involving manufacturing, assembly, fabrication, processing, bulk handling and storage, research facilities, warehousing, and heavy trucking; to provide land for those types of professional, research, business, service, and similar uses that are based in office structures and that require separate sites or developments from other more commercial and retail activities; and to protect the land base for economic development and employment opportunities. *Port Orchard Municipal Code (POMC) 16.13.160(1).* A portion of the site is located on leased City property zoned Community Facilities (Cf). The purpose of the Community Facilities zoning district includes specifically separating and controlling those public, semi-public, institutional, and private properties, facilities, and services that prime and make feasible centers of urban use. It is also the purpose of this zone to coordinate these uses to the extent that they are serving to prime the same direction, magnitude, orientation, and form of urban growth and to avoid waste, inefficiency, or contradiction, as well as to provide for and protect the buffer zones, access, and land use relationships that are often unique between infrastructure and other urban uses, such that neither use intrudes upon the other. *POMC 16.13.180(1).* Exhibit 21, Staff Report, page 2.

7. Mining and quarrying is allowed as a conditional use within the Eo zone, but not in the Community Facilities zone. *POMC Table 16.30.090.* Properties to the north and east contain commercial and industrial uses, and are designated and zoned Employment-Industrial/Office. Property to the south is vacant and is designated Community Facilities.
Property to the west is vacant, located in Kitsap County, and designated and zoned Urban Reserve. *Exhibit 21, Staff Report, pages 2 and 3.*

**Existing Conditions**

8. The gravel mine site is approximately seven acres within the Port Orchard Industrial Park and covers five parcels that include stormwater/settling ponds, a truck scale, and a small office. The Applicant’s drawing of the site depicts Lots 3, 2, and 1 located west to east from the Shawn Street SW right-of-way. Tract A is located to the east of Lot 1. Lots A and B lie to the south, are owned by the City, and are encumbered with a slope easement. The site is cleared of vegetation, and steep slopes are located on the west and south sides of the mining operation. City Associate Planner Tom Bonsell testified concerning the history of the site and noted that Kitsap County issued a grading permit in the 1970s, but a copy of this permit has not been found. The sand and gravel mine was operating in 1978 when the City annexed the property. Ms. Archer-Parsons testified that the City Council granted a slope easement on City property Lot A and Lot B to the Port Orchard Industrial Park in 1999 to accommodate the gravel mine. Lot A and Lot B, the leased City property, is currently zoned Community Facilities. Mr. Bonsell testified that the property was zoned after the City leased the property and that the City reviewed and adopted a revised City Comprehensive Plan in 2008. He testified that the gravel mine is a pre-existing, non-conforming use within the Community Facilities zoning district. *Exhibit 21, Exhibit 17; Exhibit 21, Staff Report, pages 2 and 5. Testimony of Ms. Archer-Parsons; Testimony of Mr. Bonsell.*

**Proposed Development**

9. An estimated 300,000 cubic yards of sand and gravel would be removed over a 10- to 20-year period within Lots 1 and 2, in portions of Lot 3, and on adjacent land leased from the City of Port Orchard. Front-end loaders and excavators would be used for mining excavation. Sand and gravel would be hauled off-site with trucks and trailers. The expansion of the mining activities would not increase the surface size of the gravel pit, but only the depth. Approximately 50,000 cubic yards of reclamation backfill would be used for reclamation to provide for future development. The Applicant has submitted an application for a Department of Natural Resources (DNR) Reclamation Permit. Native vegetation in site-setback areas would be retained. Reclamation would include seeding fast-growing grasses to re-vegetate the site. *Exhibit 2.E; Exhibit 13.*

**Stormwater, Utilities, and Public Services**

10. N.L. Olson and Associates, Inc., prepared an Addendum to the Port Orchard Industrial Park Storm Report, dated October 2013. The storm report determined that the area of mining is approximately 6.7 acres. Stormwater runoff would be diverted to an infiltration system of ditches, pipes, culverts, and two catch basins to be located in the middle of Lot 1 and designed for a 10-year storm. The storm report includes a downstream analysis that determined overflow would discharge into a large infiltration pond used for the industrial park. After site reclamation, the catch basins would be eliminated. According to the Applicant’s project narrative, temporary ditches and sediment traps would be

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constructed as a component of reclamation to separate the runoff from active areas from the runoff from reclaimed areas. A Storm Water Pollution Prevention Plan is in operation and contains best management practices required for coverage under the Department of Ecology’s NPDES Stormwater General Permit for Sand and Gravel. Exhibit 2.E; Exhibit 2.G.

Development Standards, Landscaping, and Parking

11. The development standards under chapter 16.40 POMC are applicable to the proposed development. The proposed development must adhere to standards requiring 30-foot-wide public street right-of-way, 85 percent maximum covered surfaces, and a 33-foot building height limitation. There are no required side-yard or rear-yard setbacks. POMC 16.40.025. The proposed grading would be set back a minimum of 30 feet from the property line. City staff determined that the development proposal conforms to these common development standards. City staff determined that chapter 16.50 POMC landscaping standards are not applicable because the proposed use is not a new development. The Applicant’s reclamation plan includes creating a slope on the southern property line within an existing slope easement granted by the City. Finished slopes would not exceed 2H:1V (horizontal to vertical unit ratio). City staff reviewed parking calculations provided by the Applicant and determined that there is adequate parking available on-site and it would be in compliance with POMC 16.54.250 parking standards. Exhibit 1; Exhibit 2.E; Exhibit 2.F; Exhibit 2.I; Exhibit 21, Staff Report, pages 4 and 5.

Traffic Impacts

12. Access to the site is from Lumsden Road. No increase in the volume of daily material removal is proposed. An increase of traffic volume beyond current levels is not anticipated. Exhibit 3; Exhibit 21, Staff Report, page 4.

 Applicant Comments and Staff Recommendation

13. Norm Olson, Applicant Representative, testified that the DNR reclamation permit would require creation of three development areas onsite and referenced Sheet 5 of 5 of Exhibit 2.I. He agreed that a condition could be added to clarify that, after expiration of the CUP and DNR reclamation permit, the slope easement will continue per its terms. Dan Wolfard, R.V. Associates, Inc., Operations Manager, testified that the Applicant’s lease with the City is for 99 years and is intended to allow the stormwater parcel in Tract A to extend into Lot B. He testified that R.V. Associates, Inc., has been operating the sand and gravel mine since 1985 without complaints from the public. City staff reviewed the CUP application and determined that, with conditions, the proposed use would be consistent with the City Comprehensive Plan, the Municipal Code, and other applicable city and state regulations, and recommends approval. Exhibit 21, Staff Report, page 6; Exhibit 22; Testimony of Mr. Olson; Testimony of Mr. Wolfard.
CONCLUSIONS

Jurisdiction

The City of Port Orchard Hearing Examiner is authorized to hold a hearing on the conditional use permit application. Based on the evidence in the record, the Hearing Examiner may grant, grant with conditions, or deny the application. *Port Orchard Municipal Code (POMC) 2.76.080; POMC 2.76.100; POMC 2.76.110; POMC 16.01.021(3).*

Criteria for Review

A conditional use permit shall be granted only if the Applicant demonstrates that the proposed use:

(a) Will be designed in a manner which is compatible with the character and appearance with the existing, or proposed development in the vicinity of the subject property;
(b) Will not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties due to the location, size, and height of buildings, structures, walls and fences, and screening vegetation of the proposed use;
(c) Will be designed in a manner that is compatible with the physical characteristics of the subject property;
(d) Will mitigate impacts in a manner equal to or greater than the standards of this code;
(e) Will not conflict with the health and safety of the community;
(f) Will not create pedestrian and vehicular traffic that will be hazardous or conflict with existing and anticipated traffic in the neighborhood; and
(g) Will provide adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities.

*POMC 16.35.010(3).*

The criteria for review adopted by the Port Orchard City Council are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions

1. **With conditions, the proposed project will be designed in a manner compatible with the character and appearance of the existing or proposed development in the vicinity of the subject property.** A majority of the existing sand and gravel mine is located within the Port Orchard Industrial Park. Proposed mine expansion would not increase the footprint of the existing mining operation, but would allow the depth of the existing mine to increase. The proposed use, therefore, would not increase the intensity of the current mining operation. The Applicant would carry out a reclamation plan requiring approximately 50,000 cubic yards to prepare the site for future development. A portion of the mining operation is located within the Community Facilities zoning district where it is not a permitted use. The City Council, however, approved the Comprehensive

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Plan in 2008, and approved a 99-year lease, as well as a slope easement, to allow the mining use in the Community Facilities zone. This Council action supersedes any restrictive language in the Comprehensive Plan. Conditions are necessary to ensure that the Applicant provides the City with an approved Department of Natural Resources reclamation permit; complies with WSDOT backfill standards; and marks the limits of the mining operation through a field survey. Findings 1, 3, 4, 6-13.

2. **The proposed project will not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties.** The proposed use would not increase the intensity of the current mining operation. The proposed use is consistent with the use within the industrial park. No additional traffic impacts would occur. Findings 1, 3, 4, 6-13.

3. **With conditions, the design is compatible with the physical characteristics of the subject property.** The proposed use would be a continuation of the existing mining operation by retaining the existing mining footprint and excavating to a greater depth. The Applicant would carry out a reclamation plan requiring approximately 50,000 cubic yards to prepare the site for future development within the Port Orchard Industrial Park. Conditions are necessary to ensure that the Applicant provides the City with an approved Department of Natural Resources reclamation permit; complies with WSDOT backfill standards; and marks the limits of the mining operation through a field survey. Findings 1, 3, 4, 6-13.

4. **With conditions, impacts will be mitigated in a manner equal to or greater than the standards of the municipal code.** The City reviewed the Applicant’s environmental checklist and determined that, with SEPA conditions, the proposed use would not have a probable significant adverse impact. The SEPA conditions have been incorporated into this CUP. The Applicant’s reclamation plan includes creating a slope, not to exceed 2H:1V on the southern property line within a slope easement granted by the City. Conditions are necessary to ensure that the Applicant provides the City with an approved Department of Natural Resources reclamation permit; complies with WSDOT backfill standards, and marks the limits of the mining operation through a field survey. Findings 1, 3-13.

5. **With conditions, there will be no conflict with the health and safety of the community.** The City provided notice of the application and the associated open-record hearing. The City reviewed the Applicant’s environmental checklist and determined that, with conditions, the proposed use would not have a probable significant adverse impact. No additional traffic impacts were identified. A Stormwater Pollution Prevention Plan is already in operation for the site as part of an NPDES Stormwater General Permit for Sand and Gravel issued by the Department of Ecology. Conditions are necessary to ensure that the Applicant notifies the Kitsap County Health District should any solid waste on the property be encountered. Findings 1-13.
6. **There will be no pedestrian or vehicular traffic that would be hazardous or conflict with existing and anticipated traffic in the neighborhood.** The proposed use would not increase the intensity of the current mining operation. The proposed use is consistent with the use within the industrial park. There would be no additional traffic impacts on the surrounding road network. *Findings 1, 3, 4, 6-13.*

7. **The proposed project will provide adequate public facilities or services and will not adversely affect public services to the surrounding area.** The proposed use would not increase the intensity of the current mining operation. The proposed use is consistent with the use within the industrial park. The proposed reclamation would allow for redevelopment of the property in the future. *Findings 1, 3, 4, 6-13.*

**DECISION**

Based on the above findings and conclusions, a conditional use permit to expand the RV Associates, Inc., sand and gravel mine to allow the removal of approximately 300,000 cubic yards of material at 1475 Lumsden Road, Port Orchard, Washington, is **APPROVED**, subject to the following conditions:4

A. **General Conditions**

1. Once approved, the Applicant shall provide the City with the approved, revised, Department of Natural Resources (DNR) Reclamation Permit No. 70-011697.

2. This CUP permit shall expire upon the expiration of the DNR sand and gravel mining permit. The slope easement shall continue per its terms.

B. **SEPA Mitigation Conditions**

1. To ensure proper compaction and that the future site is suitable for development, backfill shall meet WSDOT Standards.

2. To eliminate the potential for encroachment of mining activities onto adjacent parcels, the limits of the gravel operation shall be clearly marked by survey in the field.

3. Per Kitsap County Health Department comment, any development or construction activities within 1,000 feet of a closed landfill are subject to the rules and requirements of Kitsap County Board of Health Ordinance 2010-1, Solid Waste Regulations, Section 460, *Construction and Notification Standards Near Landfills.*

4. Per Kitsap County Health Department comment, should RV Associates encounter any "pockets" of old, buried solid waste on their property during site development, they are required to report this find to the Health District and properly remove and dispose

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4 This decision includes conditions required to reduce project impacts as well as conditions required to meet Municipal Code standards.

5 Condition Nos. 1 through 4, SEPA Mitigation Conditions, appear, in the text that follows, as written in the City’s MDNS, issued January 3, 2014. *Exhibit 14.*

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of this waste in accordance with the Solid Waste Regulations (i.e., recycling or disposing the wastes at an appropriately permitted solid waste facility). This may include testing and sampling the wastes to determine if it is dangerous or not so that the wastes are properly handled.

Decided this 4th day of February 2014.

THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center