

ISLAND COUNTY HEARING EXAMINER

RE: SITE PLAN REVIEW	)	File No. SPR 297/08
Applicant:	)	FINDINGS OF FACT
Rempel Brothers Concrete	)	CONCLUSIONS OF LAW
	)	AND DECISION
	)	

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**SUMMARY OF APPLICATION AND DECISION**

APPLICATION: Rempel Brothers Concrete is seeking Site Plan Review Approval for the expansion of an existing sand and gravel mining operation. The granting of approval would expand by approximately 100-acres the existing 65-acre surface mine. Mining on the project site is expected to last approximately 50 years.

DECISION: Site Plan Review Approval is granted, subject to conditions.

**FINDINGS OF FACT**

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on January 6, 2011.

I.

PRELIMINARY INFORMATION

Applicant: Rempel Brothers Concrete

Property Location: 27364 SR 525, Coupeville, Washington

Assessors Parcel No.'s: R23132-173-4670, R23132-074-4660, R23132-074-3340, R23132-187-1470, R23132-173-2310, & R23132-206-3350

Applicable Ordinances: Zoning Ordinance Chapter 17.03 ICC, Land Use Review Ordinance Chapter 16.19 ICC, Site Plan Review Ordinance Chapter 16.15 ICC

Publication: December 25, 2010, issue of the Whidbey News Times /SW Record

Mailing of Notice to Applicant: November 18, 2010

Sign Posted: November 11, 2008

Mailing of Staff Report: December 23, 2010

Date of Application: October 15, 2008

Hearing Date: January 6, 2011

Exhibit Log:

1. Staff Report
2. Land Development Permit Application #297/08; date received 10/15/08
3. Form C Application for Site Plan Review; date received 10/15/08
4. Environmental Checklist; date received 10/15/08
5. Wetland Buffer Worksheet; date received 10/15/08
6. Land Use Intensity Worksheet; date received 10/15/08
7. Pond Reclamation Upon Cessation of Mining; date received 10/15/08
8. Settling and Retention Ponds; date received 10/15/08
9. Offsite Transportation; date received 10/15/08
10. Processing Narrative; date received 10/15/08
11. Letter RE: Noise Level WAC 173-60 from David Walden to Aneta Hupfauer; date received 10/15/08
12. Application for Reclamation Permit Form SM-8A from Washington State Department of Natural Resources; date received 10/15/08
13. Buildings within 1000 feet of Permit Boundary for Surface Mine Reclamation Permit Application 70-011408; date received 10/15/08
14. Adjacent Landowner Table (Attached to Figure 17); date received 10/15/08
15. Reclamation Sequence Narrative, date received 10/15/08
16. Figure 1. Site Access for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
17. Figure 2. Existing (Pre-Mining) Topographic Map for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
18. Figure 3. Reclamation Sequence (Segments) for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
19. Figure 4. Reclamation-Topographic (Contours and Elevations) for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
20. Figure 5. Cross-Section Locations for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
21. Figure 6. Cross-Section A-A for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
22. Figure 7. Cross-Section B-B for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
23. Figure 8. Permit Boundary for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
24. Figure 9. Permanent Setbacks and Berms for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
25. Figure 10. Reclamation Setbacks for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
26. Figure 11. Conservation Setbacks for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
27. Figure 12. Topsoil/Subsoil Storage Areas for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10

28. Figure 13. Segmental Topsoil Removal and Replacement for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
29. Figure 14. Areas to be Backfilled for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
30. Figure 15. Location and Depth of Topsoil and Areas Revegetated for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
31. Figure 16. Names of Wells, Lakes, Streams, Springs, Existing Wetlands and Manmade Drainways for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
32. Figure 17. Boundaries of Property Ownership for Surface Mine Reclamation Permit Application #70-011408; date received 10/15/10
33. Legal Description of Parcels for Expansion; date received 10/15/08
34. Pollution Prevention Team Organization Chart; date received 10/15/08
35. Appendix A Solid Waste Regulatory Applicability Checklist; date received 10/15/08
36. Hydrogeological Site Evaluation Report; date received 10/15/08
37. Hydrogeologic Database Circular Search; date received 10/15/08
38. Wetland Site Assessment Report; date received 10/15/08
39. Survey- portion of Sec 32, Twp 31N, R 2E; date received 10/15/08
40. Certificate of Transportation Concurrency; date received 10/15/08
41. Articles of Incorporation from State of Washington Secretary of State; date received 10/15/08
42. Waiver and Consent to Actions in Lieu of 2008 Annual Meeting of Shareholders and Directors; dated 10/15/08
43. U. Surface Mining 1 (a) v, vi, vii, ix, x; date received 10/15/08
44. Letter RE: SR-525 MP 27.33 CS 15300 from Marv Pulst to Rempel Bro's Concrete with attached enclosure; date received 10/15/08
45. County or Municipality Approval for Surface Mining (Form SM-6); date received 10/15/08
46. Registration Certificate No. 353-EM01-I; date received 10/15/08
47. Department of Ecology Permit #GI-26697P; date received 10/15/08
48. Monitoring Plan WAG 503367; date received 10/15/08
49. Spill Control Plan; date received 10/15/08
50. Appendix A Source-Specific Operational and Structural Source Control Best Management Practices; date received 10/15/08
51. Quarterly Mine Employment and Coal Production Report; date received 10/15/08
52. Mine Citation/Order #7959588; date received 10/15/08
53. Mine Citation/Order #7959589; date received 10/15/08
54. Mine Citation/Order #7959590; date received 10/15/08
55. Request for Comment; date received 10/15/08
56. Account Summary Snapshot, Parcel Summary Report, Access report & zoning report for R23132-074-3340
57. Account Summary Snapshot, Parcel Summary Report, Access report & zoning report for R23132-074-4660
58. Account Summary Snapshot, Parcel Summary Report, Access report & zoning report for R23132-173-4670
59. Color Critical Areas Map
60. Quarter section map
61. Guidance Memo RE: Site plan and elevation drawings; rev. 9/26/06
62. Memo RE: Rempel Bros, Concrete Inc. SWMP from Marie Piper to Aneta Hupfauer; dated 11/20/08
63. Public Health review letter from Aneta Hupfauer to Brandon Sweezea; dated 12/1/08
64. Memo regarding Critical areas review from Justin Craven to Brandon Sweezea; dated 12/10/08
65. Public Works review letter from Bill Poss to Brandon Sweezea; dated 12/10/08
66. Review Comment letter from Brandon Sweezea to Dave Walden; dated 12/10/08
67. Critical Areas Review memo from Justin Craven to Brandon Sweezea; dated 3/12/09
68. Review Comment letter from Brandon Sweezea to Dave Walden; dated 3/24/09

69. Public Works review letter from Bill Poss to Brandon Sweezea; dated 3/24/09
70. Public Health review letter from Aneta Hupfauer to Brandon Sweezea; dated 4/2/09
71. Public Works review letter from Bill Poss to Brandon Sweezea; dated 9/9/09
72. Critical Areas Review memo from Justin Craven to Brandon Sweezea; dated 11/23/09
73. Public Health review letter from Aneta Hupfauer to Brandon Sweezea; dated 1/29/10
74. Review Comment letter from Brandon Sweezea to Dave Walden; dated 2/5/10
75. Public Health review letter from Aneta Hupfauer to Brandon Sweezea; dated 4/19/10
76. Public Works review letter from Bill Poss to Brandon Sweezea; dated 4/26/10
77. Public Works review letter from Bill Poss to Brandon Sweezea; dated 8/9/10
78. Public Health review letter of additional information received 7/21/10 & 8/19/10 from Aneta Hupfauer to Brandon Sweezea; dated 8/30/10
79. Public Works review letter regarding the new information submitted; from Bill Poss to Brandon Sweezea; dated 9/20/10
80. Review Comment letter from Brandon Sweezea to Dave Walden; dated 9/24/10
81. Memo from Justin Craven to Brandon Sweezea; dated 10/4/10
82. Letter RE: Surface Mine Reclamation (SMR) Permit#70-011408, Extension from Tara Salzer, Department of Natural Resources to Greenbank Inc; date received 10/15/08
83. Letter from Dept of Natural Resources, RE: SEPA Comment #297/08 SPR; Proposed Surface Mine Expansion, Rempel Brothers Concrete, Inc., SMR Permit No. 70-011408, Island County; date received 11/7/08
84. Fax of letter RE:Rempel Brothers Gravel Mine File Number 297/08 SPR (Ecology #08-8083); from Greta Slough to Brandon Sweezea; date received 11/26/08
85. Certified Mail Letter RE: Warning Non-Compliance-with Sand and Gravel General Permit (#WAG-503367) at Rempel Bros Concrete on February 27, 2009; date received 3/18/09
86. Letter RE: Rempel Brothers proposed expansion of existing mine site in Island County (DNR permit#70-011408) from Rian Skov to Brandon Sweezea; date received 7/29/10
87. Public comment email with attached letter from Marcia Comer; date emailed 11/15/08
88. Public comment email from Marcia Comer; date emailed 11/15/08
89. Public comment letter from Martin Schmidt; date received 11/17/08
90. Public comment letter from Frank Barham; date received 11/17/08
91. Public comment letter from Margaret Barham; date received 11/17/08
92. Public comment letter from Deborah Vrungos; date received 11/20/08
93. Public comment email with attached letter from Marcia Comer; date emailed 11/15/08
94. Public comment email with attached letter from Diane Kendy; date emailed 11/18/08
95. Public comment email with attached letter from Tim Hyatt; date emailed 11/20/08
96. Public comment email from Deborah Vrungos; date emailed 11/24/08
97. Public comment letter from Jim Lapinski; date received 11/25/08
98. Public comment email from Dick Dodge; date emailed 11/25/08
99. Public comment email from Jan Dodge; date emailed 11/25/08
100. Public comment email from Diane Stone; date emailed 11/26/08
101. Public comment fax letter with attached Notice of Application with SEPA from Mary Steward; date received 11/26/08
102. Public comment letter from Daniel Horsell; date received 11/26/08
103. Public comment letter from Don Lashley; date received 11/26/08
104. RECEIVED AFTER PUBLIC COMMENT PERIOD—Public comment email with attachment from Steve Erickson to Brandon Sweezea; date emailed 11/28/10
105. Notice of Complete Application letter from Andrea Richardson to Karolyn Cooley; dated 10/31/08
106. Affidavit of Mailing the Public Notice with attached list of parties of record and/or property owners within 300 feet; date notarized 11/7/08
107. Affidavit of Mailing the Public Notice to Karolyn Cooley; date notarized 11/7/08
108. Notice of Application with SEPA; date of Notice of Application 11/12/08
109. Affidavit of Posting the Public Notice Sign; date received 11/17/08

110. Affidavit of Publication In the Matter of Notice of Application with SEPA, 297/08 SPR; date received 11/17/08
111. Letter of Notification of Hearing Date from Paula Bradshaw to Bruce Rempel; dated 11/18/10
112. Affidavit of Mailing the Notification of the Hearing Date; date notarized 11/18/2010
113. Letter RE: Request for Time Extension from Dave Walden to Brandon Sweeza; dated 1/5/08
114. Letter from Bruce Rempel to Brandon Sweeza; dated 10/08/08
115. Memo from Brandon Sweeza to File; dated 12/10/08
116. Email correspondence between Karolyn Cooley & Brandon Sweeza; date emailed 1/5/09
117. Email correspondence between Karolyn Cooley & Brandon Sweeza; date emailed 1/5/09
118. Fax from Bruce Rempel to Justin Craven; date faxed 5/12/09
119. Fax from Justin Craven to Bruce Rempel; dated 5/12/09
120. Letter from Bruce Rempel to Mr. Bobbink, RE: CUP 075/06 (reforestation); date received 11/24/10
121. **Additional Information Received 2/13/09:**
  - a. Cover Letter with Comment Responses from Geoff Tapert to Brandon Sweeza
  - b. Notes & Project Data, sheet C-1 of 17; dated 2/13/09
  - c. Site Layout & Project Data, sheet C-2 of 17
  - d. Existing Site Plan, sheet C-3 of 17
  - e. Existing Operations Layout, sheet C-4 of 17
  - f. Segment A Grading & Drainage Plan, sheet C-5 of 17
  - g. Segment A Mining Operation Schematic, sheet C-6 of 17
  - h. Segment B Grading & Drainage Plan, sheet C-7 of 17
  - i. Segment B Mining Operation Schematic, sheet C-8 of 17
  - j. Segment C Grading & Drainage Plan-1, sheet C-9 of 17
  - k. Segment C Grading & Drainage Plan-2, sheet C-10 of 17
  - l. Segment C Mining Operation Schematic, sheet C-11 of 17
  - m. Segment D Grading & Drainage Plan, sheet C-12 of 17
  - n. Segment D Mining Operation Schematic, sheet C-13 of 17
  - o. Segment E Grading & Drainage Plan, sheet C-14 of 17
  - p. Segment E Mining Operation Schematic, sheet C-15 of 17
  - q. Details, sheet C-16 of 17
  - r. Isometric Representation, sheet C-17 of 17
  - s. Letter of Results of Study Area Investigation and Wetland Buffer worksheet Revisions
  - t. Water Level Monitoring Plan Expanded Surface Mining Area, dated 1/30/09
  - u. Recycling or Material Recovery Facility Notice of Intent to Operate under Terms and Conditions for Solid Waste Permit
  - v. Drainage Report for Greenbank Sand & Gravel Inc. Expansion Plan
  - w. Letter of Additional Information Received from Brandon Sweeza to Dept of Ecology, Dept of Fish and Wildlife, Bill Poss, Aneta Hupfauer, & Justin Craven; dated 2/13/09
122. **Additional Information Received 8/26/09:**
  - a. Letter of Revegetation Plan and Buffer zone boundary from David Walden to Brandon Sweeza
  - b. Letter of second request for information regarding Expansion Application from Rempel Bros. Concrete to Aneta Hupfauer
  - c. Spill Control Plan
  - d. Solid Waste Management Plan Existing Mining Area and Proposed Expansion
  - e. Utility Vault diagram
  - f. Recharge Rates from X-Sound Engineering
  - g. Fuel Storage Containment diagram from X-Sound Engineering
  - h. Coalescing Plate Sizing with attached spreadsheet from X-Sound Engineering
  - i. Soil Borings and Piezometer Locations Map
  - j. Concrete Ad-Mix Containment diagram

- k. Onsite Wetland Contributing Basin Map
  - l. Letter addressing comment letter dated 3/24/09 with attachments from Geoff Tapert to Brandon Sweeza
  - m. Letter of response to letter dated 3/16/09: Warning Non-Compliance; from Rempel Bros Concrete to Gerald Shervey.
  - n. Email from Jerry Shervey to Karolyn Cooley; RE: Rempel Bros
  - o. Monitoring Plan-WAG 503367
  - p. Letter of Estimated cost of Proposed Reclamation and attached letter per Dept of Natural Resources dated 1/19/09 to Brandon Sweeza from David Walden
  - q. Notes and Project Data from Greenbank Sand & Gravel, Inc, dated 6/3/09; Sheet C-1 of 18
  - r. Site Layout and Project Data; Sheet C-2 of 18
  - s. Existing Site Plan, Sheet C-3 of 18
  - t. Existing Operations Layout, Sheet C-4 of 18
  - u. Segment A Grading & Drainage Plan, Sheet C-5 of 18
  - v. Segment A Mining Operation Schematic, Sheet C-6 of 18
  - w. Segment B Grading & Drainage Plan, Sheet C-7 of 18
  - x. Segment B Mining Operation Schematic, Sheet C-8 of 18
  - y. Segment C Grading & Drainage Plan-1, Sheet C-9 of 18
  - z. Segment C Grading & Drainage Plan-2, Sheet C-10 of 18
  - aa. Segment C Mining Operation Schematic, Sheet C-11 of 18
  - bb. Segment D Grading & Drainage Plan, Sheet C-12 of 18
  - cc. Segment D Mining Operation Schematic, Sheet C-13 of 18
  - dd. Segment E mining Operation Schematic, Sheet C-15 of 18
  - ee. Details, Sheet C-16 of 18
  - ff. Isometric Representation, Sheet C-17 of 18
  - gg. Offsite Wetland Plan, Sheet C-18 of 18
  - hh. Appendix A Solid Waste Regulatory Applicability Checklist
  - ii. Stormwater Pollution Prevention Plan Team (SWPPP) Organizational Chart
  - jj. Wetland Hydrogeologic Assessment Expanded Surface Mining Area, dated 7/23/09
  - kk. Sheet C-4 of 17, Existing Operations Layout; dated 2/10/09
  - ll. Fax from Karolyn to Marie Piper, 11 pages
  - mm. Letter RE: Results of Offsite Wetland Delineation and Buffer Worksheet, from AMEC Earth & Environmental to Rempel Brothers Concrete, Inc.; date received 8/26/09
  - nn. Letter of Additional Information Received on 8/27/09 from Brandon Sweeza to Dept of Ecology, Dept of Fish and Wildlife, Bill Poss, Aneta Hupfauer, & Justin Craven; dated 8/27/09
123. **Additional Information Received 4/1/10:**
- a. Letter with cost estimate for reclamation, typical planting plan for the reclaimed areas, response to Bill Poss and a plan (schedule C) of the proposed native species and their proposed densities from Geoff Tapert of X-Sound Engineering, Inc., to Brandon Sweeza
  - b. Letter from Chris Johnson of Dept of Natural Resources to Greenbank Incorporated, RE: Inspection Report for Surface Mine Reclamation Permit No. 70-011408
  - c. Memo of additional information received from Andreanna Richardson for Brandon Sweeza to Dept of Ecology, Dept of Natural Resources, Dept of Fish and Wildlife, Bill Poss, Aneta Hupfauer, & Justin Craven; dated 4/5/10
124. **Additional Information Received 7/21/10:**
- a. Memo from Geoff Tapert to Brandon Sweeza, RE: Response to April 26, 2010 letter
  - b. Memo from Geoff Tapert to Justin Craven, RE: Greenbank Sand and Gravel
  - c. Notes and Project Data; Sheet C-1 of 18; dated 7/19/10
  - d. Site Layout & Project Data, Sheet C-2 of 18
  - e. Existing Site Plan, Sheet C-3 of 18
  - f. Existing Operations Layout, Sheet C-4 of 18
  - g. Segment A Grading & Drainage Plan, Sheet C-5 of 18

- h. Segment A Mining Operation Schematic, Sheet C-6 of 18
  - i. Segment B Grading & Drainage Plan, Sheet C-7 of 18
  - j. Segment B Mining Operation Schematic, Sheet C-8 of 18
  - k. Segment B Grading & Drainage Plan-1, Sheet C-9 of 18
  - l. Segment C Grading & Drainage Plan-2, Sheet C-10 of 18
  - m. Segment C Mining Operation Schematic, Sheet C-11 of 18
  - n. Segment D Grading & Drainage Plan, Sheet C-12 of 18
  - o. Segment D Mining Operation Schematic, Sheet C-13 of 18
  - p. Segment E Grading & Drainage Plan, Sheet C-14 of 18
  - q. Segment E Mining Operation Schematic, Sheet C-15 of 18
  - r. Details, Sheet C-16 of 18
  - s. Isometric Representation, Sheet C-17 of 18
  - t. Offsite Wetland Plan, Sheet C-18 of 18
  - u. Memo of additional information received from Brandon Sweeza to Dept of Ecology, Dept of Fish and Wildlife, Bill Poss, Aneta Hupfauer, & Justin Craven; dated 7/21/10
125. **Additional Information Received 8/17/10:**
- a. Memo RE: Response to Memo Data 8/9/10, from Geoff Tapert to Bill Poss
  - b. Notes and Project Data; sheet C-1 of 18; dated 7/19/10
  - c. Site Layout & Project Data, sheet C-2 of 18
  - d. Existing Site Plan, sheet C-3 of 18
  - e. Existing Operations Layout, sheet C-4 of 18
  - f. Segment A Grading & Drainage Plan, sheet C-5 of 18
  - g. Segment A Mining Operation Schematic, sheet C-6 of 18
  - h. Segment B Grading & Drainage Plan, sheet C-7 of 18
  - i. Segment B Mining Operation Schematic, sheet C-8 of 18
  - j. Segment C Grading & Drainage Plan-1, sheet C-9 of 18
  - k. Segment C Grading & Drainage Plan-2, sheet C-10 of 18
  - l. Segment C Mining Operation Schematic, sheet C-11 of 18
  - m. Segment D Grading & Drainage Plan, sheet C-12 of 18
  - n. Segment D Mining Operation Schematic, sheet C-13 of 18
  - o. Segment E Grading & Drainage Plan, sheet C-14 of 18
  - p. Segment E Mining Operation Schematic, sheet C-15 of 18
  - q. Details, sheet C-16 of 18
  - r. Isometric Representation, sheet C-17 of 18
  - s. Offsite Wetland Plan, sheet C-18 of 18
  - t. Memo of additional information received from Brandon Sweeza to Bill Poss, Aneta Hupfauer, & Justin Craven; dated 8/19/2010
126. **Additional Information Received 10/26/10:**
- a. Letter from Geoff Tapert to Brandon Sweeza; RE: Comments dated 9/24/10
  - b. Notes and Project Data; sheet C-1 of 18; dated 10/19/10
  - c. Site Layout & Project Data, sheet C-2 of 18
  - d. Proposed Site Plan, sheet C-3 of 18
  - e. Existing Operations Layout, sheet C-4 of 18
  - f. Segment A Grading & Drainage Plan, sheet C-5 of 18
  - g. Segment A Mining Operation Schematic, sheet C-6 of 18
  - h. Segment B Grading & Drainage Plan, sheet C-7 of 18
  - i. Segment B Mining Operation Schematic, sheet C-8 of 18
  - j. Segment C Grading & Drainage Plan-1, sheet C-9 of 18
  - k. Segment C Grading & Drainage Plan-2, sheet C-10 of 18
  - l. Segment C Mining Operation Schematic, sheet C-11 of 1
  - m. Segment D Grading & Drainage Plan, sheet C-12 of 18
  - n. Segment D Mining Operation Schematic, sheet C-13 of 18
  - o. Segment E Grading & Drainage Plan, sheet C-14 of 18

- p. Segment E Mining Operation Schematic, sheet C-15 of 18
  - q. Details, sheet C-16 of 18
  - r. Isometric Representation, sheet C-17 of 18
  - s. Offsite Wetland Plan, sheet C-18 of 18
127. Final SEPA threshold Determination Mitigated Determination of Non- Significance; dated 12/6/10
  128. Letter of Notification of Hearing Date to Bruce Remple, David Walden & Parties of Record from Paula Bradshaw; dated 12/23/2010
  129. Affidavit of Mailing the Notification of Hearing Date; date notarized 12/23/2010
  130. Public comment email from Sharon Dunn To Bob Pederson RE: Rempel Expansion; date emailed 1/3/11
  131. Email with attachment of letter 11-14-08 from Marcia L. Comer to Paula Bradshaw RE: Rempel Hearing Attn: Hearing Examiner; date emailed 1/5/11
  132. Public comment email from Ralph and Susan Becker to Paula Bradshaw re: Rempel; date emailed 1/5/11
  133. Public comment email from Howard Garrett to Paula Bradshaw; Brandon Sweeza RE: Rempel Bros expansion; date emailed 1/5/11
  134. Public comment email from Dustin & Marlene Sanford to Paula Bradshaw RE: Rempel Bros.; date emailed 1/6/11
  135. Public comment email from Fell Cheston to Paula Bradshaw RE: gravel pit expansion; date emailed 1/6/11
  136. Public comment email from Kirk Francis and Leslie Larch to Brandon Sweeza RE: comment Rempel Bros. Permit; date emailed 1/6/11
  137. Copy of newspaper legal for 1/6/11 hearing.
  138. Written testimony of Debbie Vrungos with 6 attached pictures taken at the end of December 2010, relating to her testimony. – submitted at hearing.
  139. Printed Internet article regarding Island County Water – submitted at the hearing by Debbie Vrungos.
  140. Conditional Use Permit No. 75-06
    - a. Minutes of Meeting, Island County Board of Adjustment 9/5/79 related to the adoption of Findings of Fact & Conclusions for revisions to Conditional Use Permit # 75-06.
    - b. July 23, 93 letter from Sydney Glover, Planning Consultant from Albert Perez, Island County Planning & Community Development regarding building permits, and site plan review.
  141. Affidavit of Publication in WNT, SW/Record of Hearing Examiner hearing on January 6, 2011, dated 1/4/11.
  142. Addendum to Staff Recommendations

## HEARING TESTIMONY

Brandon Sweeza  
 Island County Planning & Community Development  
 P.O. Box 5000  
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 Jeff Tappert  
 P.O. Box 126  
 Freeland, WA 98249

Debbie Vrungos  
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Bill Poss  
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Coupeville, WA 98239

Justin Craven  
Island County Planning & Community Development  
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Coupeville, WA 98239

Heather Vic  
Hydrologist  
Seattle, WA

Bruce Rempel  
P.O. Box 206  
Greenbank, WA 98253

## II.

The Applicants are the owners of an approximately 65-acre surface mine, which initially received Conditional Use Approval from Island County in 1975. Rempel Brothers Concrete received an Operating Permit from Washington State Department of Natural Resources for the 65-acre site in April 1993.

## III.

Between 1997 and 2006, Rempel Brothers was cited for a number of violations by the Washington State Department of Natural Resources, Island County Public Health, and Island County Planning that were associated with the surface mine which is the subject of this Application. The violations, the resulting actions, including significant fines, have been set out by Staff in a Staff Report, Exhibit No. 1 in the Hearing Examiner file.

Rempel Brothers indicated at the hearing that the Factual matters set forth in the Staff Report, which would include the history of violations and penalties, were accurate.

Based on a review of all of the materials in the file and the testimony at the public hearing, the Hearing Examiner concludes that the facts set forth in the Staff Report are accurate and supported by the record as a whole. The Hearing Examiner hereby adopts Staff's Factual Findings through this reference. A copy of the Staff Report, Exhibit No. 1, is attached hereto and incorporated herein by this reference.

#### IV.

The 100-acres proposed for mine expansion is within the Mineral Lands Resource Overlay. The underlying zoning is either Rural or Rural Forest.

#### V.

On September 14, 2006, Rempel Brothers attended a pre-application conference with Island County Agencies in reference to the proposed expansion of the existing mine. A Site Plan Review Application was submitted, and a Notice of Complete Application was issued by Island County. During the Review Process, Island County Staff identified continuing compliance issues and on January 2, 2008, Rempel Brothers withdrew that application.

Island County Staff worked with the Applicants to bring Rempel Brothers into compliance with existing permits, required reclamation, and re-forestation.

After Island County Staff verified compliance on the outstanding issues, this Application for Site Plan Review was submitted. It was found complete by Island County Planning on October 31, 2008.

#### VI.

Concerns and doubts about current and future compliance by Rempel Brothers were expressed numerous times by members of the public during the public hearing. No convincing evidence of significant, continuing non-compliance was submitted into the record and Island County Staff indicated that Rempel Brothers are now in compliance.

#### VII.

The Applicants indicated at the hearing that they were in agreement with all of the Conditions of Approval recommended to the Hearing Examiner by Staff in the Staff Report. The pre-hearing record indicated that the Applicants were objecting to Staff's requirement that gravel excavation be allowed to only occur in 7-acre increments before reclamation was required. The Applicant had requested the ability to proceed in 20-acre

segments. That request was *de-facto* withdrawn when the Applicant agreed to all of Staff's recommended conditions.

Mining in 7-acre segments, with progressive reclamation, is allowed under the adopted conditions, with the requirement that Island County Planning and Community Development grant approval before a new 7-acre segment is opened. This Approval will be based on ongoing compliance and with satisfactory completion of any reclamation required for the previously mined segment.

#### VIII.

Regulated wetlands within the 100-acre expansion site have been delineated. A Condition of Approval requires that there be no soil vegetation disturbance within 175-feet of the wetland edge. Additional conditions require ongoing monitoring of the wetland aimed at ensuring that the health of the wetland be maintained throughout the ongoing mining operations.

#### IX.

All County Agencies with authority to review this Application have now concluded that the requested Site Plan Review Approval should be granted, subject to conditions.

#### X.

There was significant Public comment on and in opposition to the proposed expansion, much of which centered on Rempel Brothers history of non-compliance and past violations of applicable State and local regulations. As would be expected, the main concerns were from residents who live near or adjacent to the boundaries of the proposed expansion area. The impacts that concern members of the public, in addition to loss of compliance, included potential adverse impacts to the aquifer which serves as the drinking water for many residents in the vicinity; incompatibility of mining with single-family residential uses adjacent to or near the mining site; the inadequacy of the 100-foot vegetative buffer required by the Conditions of Approval; noise; and adverse impacts on the wetland and plant and animal life. Underlying all of these concerns was the concern about a lack of future monitoring and enforcement of the permit conditions and existing regulations.

#### XI.

Planning Department Staff required a Report from a licensed Hydrologist. That Report was submitted to the County by a self-employed, licensed and registered Hydrologist. Conditions suggested by the Hydrologist are incorporated into the Conditions of Approval. The Health Department Staff testified that they impose a minimum of a 20-foot buffer between mining activities and the top of the aquifer.

There was citizen testimony that the proposed Conditions of Approval, including the 20-foot separation buffer between the mine floor and aquifer, were inadequate to protect the aquifer. However, no evidence was introduced to support this contention or contradict the expert testimony of the Hydrologist, or the position taken by the Island County Health Department.

The potential adverse impacts to the aquifer, the adequacy of the various monitoring requirements, including the requirements for monitoring to protect the wetlands, were all questioned during the public testimony. The concerns raised were not supported by specific, factual information and/or expert testimony which would give the Hearing Examiner reason to conclude that the monitoring and protections required by Conditions of Approval recommended by Staff are inadequate.

There was additional public testimony pointing out that Rempel Brothers provided a valuable product to the local community and that Rempel Brothers is an industry which creates “living wage” jobs needed by the community.

## XII.

The Hearing Examiner concurs in Staff’s Conclusion that Rempel Brothers are currently reasonably compliant with applicable regulations and have over the past five years [during which time they were attempting to increase their mining operation size] taken significant positive steps to bring their operation into compliance. The Hearing Examiner also finds that the proposed monitoring, which requires regular reports and limits excavation expansion to 7-acres at a time, provides a reasonable assurance that the mining activity can and will take place without significant adverse impacts and in compliance with applicable regulations.

## XIII.

There were a number of requests for various bond requirements to be placed by Rempel Brothers to ensure compliance and to provide a basis for the payment of damages should the operation result in damage for which Rempel Brothers would be liable.

The record indicates that DNR has increased the reclamation bond for the existing 65-acre mine to \$171,500. Both the Department of Natural Resources and Island County have the ability to impose reclamation bonds. The Hearing Examiner is unaware of any legal basis which would allow the Hearing Examiner to require the posting of a bond designed to provide resources should Rempel Brothers, during the course of the mining, cause offsite damage for which they are found liable.

There were also a number of conditions requested during public testimony, including conditions such as requiring a 500-foot buffer around the mining site and increasing monitoring requirements. The Hearing Examiner will modify the Conditions of Approval recommended by Staff to require supplemental plantings now, where

appropriate, within the 100-foot buffer to mitigate future visual impacts. In addition, Staff proposed additional conditions, in an Addendum to Staff Recommendation, not objected to by the Applicant, to ensure visual buffers, which will fully screen the mine from offsite properties.

#### XIV.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

### **CONCLUSIONS OF LAW**

#### I.

The 100-acre site proposed for mine expansion is zoned Rural or Rural Forest. The entire 100-acre site falls within the Mineral Lands Resource Overlay. The Mineral Lands Overlay was adopted by Island County as required by the Growth Management Act to identify, preserve, and make available for societal use significant mineral deposits. The Applicants are entitled to expand the existing mine onto adjacent properties within the Mineral Lands Resource Overlay and owned by them so long as they can meet the criteria for Site Plan Review Approval, including the Development Standards for Surface Mine Activity.

#### II.

The Island County Planning Director, as the Responsible Official under the State Environmental Protection Act, issued a Mitigated Determination of Non-significance for the proposed expansion. No appeals of the Mitigated Determination of Non-significance were filed within the Appeal Period. The Mitigating Conditions attached to the MDNS are required to be adopted as Conditions of Approval for this project.

The addition of conditions to mitigate potential significant adverse environmental impacts during the SEPA process is designed to ensure that, subject to existing regulation, and the Mitigation Conditions imposed under SEPA, there are no significant adverse environmental impacts from the proposed project. Since the Mitigated Determination of Nonsignificance was not appealed, it is deemed adequate when combined with existing regulations, to ensure a lack of significant adverse environmental impacts from the proposed surface mine expansion.

#### III.

Subject to the conditions set forth below, the Hearing Examiner concludes that the proposed expanded mining operation meets the requirements for Site Plan Review Approval in Chapter 16.15 ICC, the applicable Development Standards for mining operations set forth in 17.03,180.U ICC and other applicable Development Standards in

Chapter 17.03. Through this reference, the Hearing Examiner adopts the legal conclusions set forth in the attached Staff Report, pages 3 through 11, as Conclusions of Law herein.

IV.

The Hearing Examiner should grant Site Plan Review Approval subject to conditions.

V.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

**DECISION**

The Island County Hearing Examiner hereby grants approval to Site Plan Review, SPR 297/08, which will allow expansion by 100-acres, an active surface mine located in the vicinity of 27364 State Route 525, Coupeville, Washington 98293, on Assessor's Parcel Numbers R23132-173-4670, R23132-074-4660, R23132-074-3340, R23132-187-1470, R23132-173-2310, and R23132-206-3350, subject to the following Conditions of Approval:

1. All development and use of the land to which SPR 297/08 pertains shall be in conformance with the approved Site Plan application and the following requirements unless they are amended in conformance with 16.15 ICC.
2. Compliance with all conditions of the Island County Engineering Division as specified in the memorandum dated September 20, 2010 (Exhibit Log # 79).
3. Compliance with all conditions of the Island County Public Health as specified in the memorandum April 30, 2010 (Exhibit Log # 78).
4. Compliance with all conditions of the Island Critical Areas Planner as specified in the memorandum dated October 4, 2010 (Exhibit Log # 81).
5. Excavation shall not occur within 500 feet of any Rural Residential zoned properties pursuant to ICC 17.03.180.U.
6. All mining activities shall be conducted in compliance with and consistent with the Development Standards for Surface Mining set forth in Chapter 17.03.180.U ICC.
7. Noise levels at the property boundaries shall not exceed the maximum environmental noise levels outlined in WAC 173-60.
8. Mining operations shall conform to clean air requirements of the Northwest Air Pollution Control Authority. Gravel excavation is only allowed to occur in seven (7) acre segments. A Progressive Reclamation Plan reflecting the 7 acre segment and a revised site plan map shall be approved by the County prior to beginning any

mining activities authorized through this permit. Up to three (3) additional acres are allowed to be cleared and topsoil removed for reclamation uses in conjunction with each 7 acre mining excavation segment.

9. Approval from Island County Planning & Community Development must be obtained for each reclaimed segment before progressing to mine the next segment. The operator must submit a narrative prior to inspection including, but not limited to: current site conditions, reclamation progress, survival rates for installed vegetation, and sizes of areas being actively mined, the next segment to be mined, and areas undergoing reclamation and shall meet Reclamation Standards contained in ICC 17.03.180.U.3. Groundwater and wetland monitoring data may be required for each inspection. Mining excavation found to exceed 7-acre segments is subject to enforcement action.
10. Reclamation shall begin within one year of any segment no longer needed for excavation or maneuvering of vehicles. A combination of native trees and understory shall be planted on the mine floor of reclaimed segments so as to minimize the colonization of non-native species. A Re-vegetation Plan will be required to be approved by Island County prior to reclamation. All planted, seeded, or transplanted species shall be native and reflect surrounding plant communities.
11. All reclamation plans submitted shall include a section specifically identifying steps to be taken to control the establishment and spread of non-native species in the reclaimed areas
12. The survival rate of trees planted for final reclamation shall not be less than 65% for three years following planting.
13. Security fencing at least 5.5 feet in height shall be erected around the perimeter of the expansion pursuant to ICC 17.03.180.U.
14. Pursuant to ICC 17.03.180.U, explosives shall not be used on-site.
15. There shall be no soil or vegetation disturbing activities within 175 feet of the wetland edge.
16. The following Best Management Practices shall be followed:
  - A. Utilize groundwater protective measures, such as impervious surfaces under vehicle storage and maintenance areas.
  - B. On-site storage of hazardous materials shall conform to WAC 173-304.
  - C. Above ground storage tanks must comply with the proposed best management practices.
  - D. Maintain an undisturbed 20-foot vertical buffer between the aquifer and the bottom of the excavation.
  - E. All vehicle storage, refueling, washing, etc shall occur within the impervious containment area or shed.
  - F. Spill response kits shall be located in all vehicles operated onsite and in the structure.

- G. All employees operating machinery onsite shall be properly trained in the use of the spill response kits.
17. Prior to commencement of site preparations, the landowner must obtain all necessary permits which may include (but not limited to) a Reclamation Permit from Department of Natural Resources (DNR) and a NPDES Permit from the State Department of Ecology (DOE).
  18. Installation of utilities shall be underground.
  19. Upon termination of mining, all debris, garbage, structures, old mining equipment, potentially toxic substances, and all other substances, materials, or equipment shall be removed from the site.
  20. No work shall be performed onsite until the Island County Planning and Community Development Department approves a native erosion control seed mix.
  21. Drainage and Erosion Controls as described in the Drainage Report and on the face of the approved site plan map shall be incorporated into surface mining activities.
  22. Hours of operation shall be limited 7a.m. to 7p.m.
  23. The above requirements are subject to change if any information provided by the applicant or their authorized representative proves inaccurate.
  24. A 100 foot forested excavation setback from all properties lines not owned by the applicant shall be maintained surrounding parcels R23132-173-4670, R23132-074-4660, R23132-074-3340. No soil or vegetation disturbing activities are permitted within the 100 foot excavation setback without prior County approval.
  25. Excavation shall not be visible from adjacent properties not owned by the applicant. Screening of areas lacking sufficient vegetation shall be enhanced with native plants. Topographical features, landscape berms, hedges, trees, walls, fences, or similar features can also be used, provided they are located outside of the 100 foot mining setback. Complete visual screening from off-site properties must be achieved prior to excavation.
  26. The Applicant shall examine the 100-foot excavation setback area around the entire site; identify areas requiring additional plantings to ensure there will be an adequate complete visual screening of future mining activity; prepare a Planting Plan for those areas which may require additional future screening; and submit the Plan to Island County Planning and Community Development Staff prior to March 4, 2011. The Planting Plan, as approved by Staff, shall be planted in the Spring 2011 unless a different planting time is indicated as more appropriate by a Landscape Architect. All plantings shall be finalized within 12 months from the date of this decision. The Planting Plan submitted shall include a monitoring plan and performance standards.

Entered this 21<sup>st</sup> day of January 2011, pursuant to authority granted under the laws of the State of Washington and Island County.

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MICHAEL BOBBINK  
Island County Hearing Examiner

APPEAL PROCESS:

SPR

This decision of the Hearing Examiner shall be a final and conclusive decision unless within fourteen (14) days following the mailing of such decision a written statement of appeal is filed with the Island County Board of Commissioners by the applicant, a Department of the County, or Party of Record, who is also an Aggrieved Person. Said statement shall set forth any alleged errors and/or the basis for appeal and shall be accompanied by a fee pursuant to the fee schedule adopted by the Board; provided that such appeal fee shall not be charged to a department of the County or to other than the first appellant ICC 16.13.100.b; ICC 16.19.190.