

ISLAND COUNTY HEARING EXAMINER

RE: SITE PLAN REVIEW ) File No. SPR 232/10  
Applicant: William Massey ) FINDINGS OF FACT  
 ) CONCLUSIONS OF LAW  
 ) AND DECISION  
 )

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**SUMMARY OF APPLICATION AND DECISION**

**APPLICATION:** William Massey seeks an Amendment to SPR 418/98 in order to reduce the existing surface mining boundaries from 29.7 acres to 20.4 acres, a 9.3 acre reduction. The site is within AICUZ Noise Zone level 3, APZ zone II, and a wetland.

**DECISION:** The Hearing Examiner for Island County grants approval of the requested Amendment to SPR 418/98, subject to Conditions of Approval.

**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 March 3, 2011.

I.

PRELIMINARY INFORMATION

Applicant: William Massey

Property Location: 583 Ault Field Road  
Oak Harbor, WA 98277

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: February 19, 2011, issue of the Whidbey News Times /SW Record

Mailing of Notice to Applicant: January 20, 2011

Sign Posted: December 1, 2010

Mailing of Staff Report: February 15, 2011

Date Application Received: November 15, 2010

Date Application Determined to be Complete: November 29, 2010

Hearing Date: March 3, 2011

Exhibit Log:

1. Staff Report
2. Cover letter RE: SPR 418/98-Amendment Application from Rick Alberg to Brandon Sweeza; date received 11/15/10
3. Master Land Development Permit Application & Applicant Authorization Form, Application Checklist & Field Indicator Worksheet; date received 11/15/10
4. Form F--Application for Site Plan Review fro Surface Mine; date received 11/15/10
5. Island Construction Sand Extraction Project Amended Site Plan-Exhibit 1; date received 11/15/10
6. Public Health Review comments from Aneta Hupfauer to Rick Amberg; Solid Waste Management Plan for Commercial Activities; date received 11/15/10
7. Pre-Application #903/10 PRE Staff Comments; date received 11/15/10
8. SP-1 Site Plan Amendment to SPR 418/98 Cover Sheet; date received 11/15/10
9. SP-2 Site Plan Amendment to SPR 418/98 Site/ Extraction Plan 1/2; date received 11/15/10
10. SP-3 Site Plan Amendment to SPR 418/98 Site/ Extraction Plan 2/2; date received 11/15/10
11. SP-4 Site Plan Amendment to SPR 418/98 Reclamation Plan 1/2; date received 11/15/10
12. SP-5 Site Plan Amendment to SPR 418/98 Reclamation Plan 2/2, Phasing-Material Ledger; date received 11/15/10
13. SP-6 Site Plan Amendment to SPR 418/98 Erosion Control & Drainage Plan; date received 11/15/10
14. SP-7 Site Plan Amendment to SPR 418/98 Visual impact Section/Detail Sheet; date received 11/15/10
15. Summary of Application and Decision; file # SPR 418/98, dated 9/18/00; Staff Report; and Memo from Scott Johns to Michael Bobbink dated 9/7/00
16. Map—Island Construction Sand Extraction Project; date received 12/21/09
17. Conclusions of Law; date received 11/15/10
18. 1000 ft zone, Ownerships and Usage map; date received 11/15/10
19. Site/ Extraction Plan 1/2; date received 11/15/10
20. Site/ Extraction Plan 2/2; date received 11/15/10
21. Reclamation Plan 1/2 Post Reclamation Conceptual Plan; date received 11/15/10
22. Reclamation Plan 2/2, Phasing/Material Ledger; date received 11/15/10
23. Erosion Control and Drainage Plan; date received 11/15/10
24. Visual Impact and Sound Buffering Sections/Detail Sheet; date received 11/15/10
25. Revised Project Entrance; date received 11/15/10

26. Exhibit 1-Island Construction Sand Extraction Project Amended Site Plan; date received 11/15/10
27. Exhibit 2- Email from Connie Bowers, Traffic Engineer to RDA & Associates, RE: Transportation Concurrency; date received 11/15/10
28. Exhibit 3-Letter from Jerry Knowles to William Massey; date received 11/15/10
29. Exhibit 4-Letter from Anne Naismith of Northwest Air Pollution Authority to Island Construction, Inc., date received 11/15/10
30. Exhibit 5-Department of Natural Resources Surface Mining Operator's Report; date received 11/15/10
31. Exhibit 6-Department of Ecology The Sand and Gravel General Permit Coverage Page, Discharge Monitoring Report & Letter RE: Wastewater Discharge Permit Fee for Permit Number: WAG503340; date received 11/15/10
32. Exhibit 7-Resource Protection Well Report; date received 11/15/10
33. WAC 197-11-960 Environmental Checklist; date received 11/15/10
34. Request for Comment; dated 11/29/10
35. Account Summary Snapshot for parcel R13326-471-3540
36. Quarter Section Map depicting parcel R13326-477-3370
37. Public Health Review comments from Aneta Hupfauer; dated 1/10/11
38. Public Works Review comments from John Bertrand; no date
39. Form SM-6 from Department of Natural Resources; date received 1/18/11
40. Notice of Complete Application from Andreana Richardson for Brandon Sweeza; dated 11/29/10
41. Affidavit of Posting the Public Notice Sign; date received 12/2/10
42. Affidavit of Mailing the Public Notice to Parties of Record and/or Property owners within 300 feet; date notarized 12/3/10
43. Affidavit of Mailing the Public Notice to Rick Almberg; date notarized 12/3/10
44. Affidavit of Posting the Public Notice Sign; date notarized 12/6/10
45. Notice of Application with SEPA; date of notice of application 12/8/10
46. Final SEPA Threshold Determination; date signed 1/18/11
47. Notification of Hearing Date letter from Paula Bradshaw to Rick Almberg; dated 1/20/11
48. Affidavit of Mailing the Notification of the Hearing Date to Rick Almberg; date notarized 1/20/11
49. Letter with enclosed staff report; dated 2/16/11
50. Affidavit of Mailing the staff report; date notarized 2/16/11
51. Resource Protection Well Report, submitted at the 3/3/11 hearing.

## HEARING TESTIMONY

Brandon Sweeza  
Island County Planning & Community Development  
P.O. Box 5000  
Coupeville, WA 98239

Rick Almberg  
RDA & Assoc., Inc.  
P.O. Box 2611  
Oak Harbor, WA 98277

II.

The Island County Planning and Community Development Department has recommended approval of the requested Amendment to an existing Site Plan Review Approval, SPR 418/98, subject to conditions. The Findings of Fact and Conclusions of Law of the Associate Planner are set forth in a Staff Report, Exhibit #1, dated January 31, 2011, a copy of which is attached hereto and incorporated herein by this reference.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to the Conditions of Approval requested by Staff. There was no public comment on this matter at the public hearing.

III.

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 existing surface mine on this site is consistent with Island County's Comprehensive Plan, which designates the site as containing minerals of long-term commercial significance. The existing mine was approved through SPR 418/98. This proposal is a request to modify that Site Plan Review by reducing the size of the mine.

II.

The Application is a Type III Site Plan Review. Appropriate notices have been given and a public hearing has been held on the request to modify the original Site Plan Review.

III.

The proposal, as conditioned by Staff, is consistent with the Site Plan Review Criteria of ICC 16.15 and with the specific Development Standards for Surface Mines set forth in ICC 17.03.180.U. Planning and Community Development Staff concluded that, subject to conditions, the application was consistent with these applicable criteria.

IV.

Other County Agencies with jurisdiction evaluated the proposal and have indicated no objection to approval, subject to conditions.

V.

The Island County Hearing Examiner should approve SPR 232/10 and grant Site Plan Approval for the modified surface mine.

VI.

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**

An Amendment to SPR 418/98 is hereby granted to William Massey, granting a 9.3-acre reduction of the existing surface mining boundaries from 29.7-acres to 20.4-acres, located at 583 Ault Field Road, Oak Harbor, Washington, subject to the following Conditions of Approval:

1. All development and use of the land to which SPR 232/10 pertains shall be in conformance with existing approved Site Plan conditions, SPR 418/98, except where amended below.
2. All development and use shall conform to the approved site plan maps (Hearing Examiner Exhibit Log #'s 1-13).
3. Compliance with all conditions of the Island County Engineering Division as specified in the memorandum dated January 24, 2011.
4. Compliance with all conditions of the Island County Public Health as specified in the memorandum January 10, 2011.
5. Compliance with all conditions of the City of Oak Harbor as specified in the memorandum January 10, 2011.
6. The proposed 50 foot vegetated berms on the northwest and western property lines must be constructed and planted prior to November 2011 and in conformance with the approved site plan. Upon completion of the berm and installation of vegetation, the applicants shall contact the Planning and Community Development to verify the required screening has been installed. Dead or dying vegetation must be replaced immediately or in the winter or summer, within the next planting season.
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.
9. Pursuant to ICC 17.03.180.U, explosives shall not be used on-site.
10. There shall be no soil or vegetation disturbing activities within 100 feet of the wetland edge.
11. All Best Management Practices established on the approved site plan map must be adhered to.
12. Prior to cessation of all mining operations, a final Reclamation Report must be submitted to the County outlining proposed re-soiling and re-vegetation of the mine floor and non-vegetated setback areas to meet reclamation standards established in ICC17.03.180.U.3(e), unless immediate development of the site is proposed. Reclamation and post mining development of the site must be in conformance with the underlying zoning of the site.
13. 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.
14. 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.
15. The above requirements are subject to change if any information provided by the applicant or their authorized representative proves inaccurate.

Entered this 15<sup>th</sup> day of March 2011, pursuant to authority granted under the laws of the State of Washington and Island County.

  
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.