BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A CONDITIONAL USE PERMIT GRANTED TO GENE BOHANNON BY YAKIMA COUNTY AND DENIED BY THE DEPARTMENT OF ECOLOGY GENE BOHANNON dba RIVERSIDE SAND AND GRAVEL AND YAKIMA COUNTY, Appellants, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.	SHB No. 79-38 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the request for review of the disapproval of a conditional use permit by the Department of Ecology, came before the Shorelines Hearings Board, Nat W. Washington, Chairman, Chris Smith, Rodney Kerslake, and David Akana in Yakima, Washington on November 7, 1979. Nancy E. Curington presided.

Appellant was represented by his attorney, Walter B. Dauber;

Yakima County was represented by Louis Daniel Fessler, Deputy Prosecuting Attorney; Respondent Department of Ecology was represented by Jeffrey D. Goltz, Assistant Attorney General.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

Appellant Gene Bohannon is the lessee of an existing, permitted 40-acre gravel mining and crushing operation which is located between the Yakima River and Riverside Road, approximately 3/4 miles south of SR 24. The site is located by the Yakima County Shoreline Master Program (YCMP) in a conservancy environment designation. The Yakima River is a shoreline of statewide significance.

II

On May 14, 1979 appellant applied for a shoreline substantial development and conditional use permits to establish an asphalt batch plant on the site. The permits were issued by the County and sent to the Department of Ecology (DOE) for approval of the conditional use permit. The DOE disapproved the conditional use permit in a letter dated August 13, 1979 which action was appealed to this Board.

III

Appellant's present sand and gravel mining operation entails bulldozing of natually occurring materials found in the ground, crushing the materials to a smaller size, and stockpiling the crushed material until it is sold. Appellant's operation is profitable.

Appellant proposes to buy and install a portable asphalt batch

plant near the present operation. The plant could be assembled in two or three days. Operation of the plant would involve loading rock aggregate processed on the site into a hopper which feeds the rock to a heater. After being heated, measured portions of rock (94%) and heated asphalt (6%), imported to the site, are mixed. After being mixed, the heated material is dumped onto a truck and taken to a site before it cools and hardens and where it is used as asphaltic concrete. Appellant plans to operate the asphalt plant on a periodic basis during the months of May through September and when he has a specific job contracted.

IV

Location of the batch plant near a source of crushed gravel would result in cost savings to appellant in that he would not need to transport his crushed rock by truck to another site. Existing asphalt plants in the vicinity are commonly situated next to a mining and crushing site in order to secure the very same economies that appellant wishes to gain. However, now all mining and crushing operations in the vicinity have asphalt plants on site, and may be operated profitably independent from an asphalt plant.

Although there are other asphalt plants located near gravel pits on the Yakima River, none has been established within a conservancy environment since the adoption and approval of the YCMP.

V

The adopted and approved YCMP defines conservancy environment as

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follows:

> . . .
> The Conservancy Environment is characterized by very low intensity land uses primarily related to natural resources use and diffuse recreational development, relatively low land values, relatively minor public and private capital investment, and/or relatively major biophysical development limitations. Management objectives are oriented toward establishing a balance between sustained-yield natural resource utilization and low density recreational uses in this environment, with restriction of development in hazardous areas. (YCMP, p. 2-6).

The YCMP has established policies for various shoreline use activities, among which is the following:

> MINING . . .
> Mining is the removal of natural occurring materials from the earth for ecomonic use. . . .
> (YCMP p. 4-3)

The YCMP also provides regulations for carrying out the intentions of the goals and policies. Relative to our inquiry are Sections 15.04 and 15.12.

Section 15.04.010 defines "mining" as "[t]he removal <u>and processing</u> of <u>naturally</u> occurring material from the earth for economic uses." (Emphasis added.) Surface mining is permitted in the conservancy environment by conditional use permit. Section 15.04.040.

Section 15.12.010 defines "industrial activities" as "[a]ctivities involved in processing, manufacturing, warehousing, or packaging of raw materials or finished products." Industrial activities are not permitted in the conservancy environment. Section 15.12.040.

The County's shoreline administrator is designated in the YCMP to make interpretations and judgments where the regulation is unclear or

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because of the language used. Section 24.00.

VI

The County's shoreline administrator reviewed Sections 15.04.010 and 15.12.010 of the YCMP and concluded that asphalt plants are included as mining activity since the mining definition includes processing, and since asphalt plants are necessarily located at or within mining operations. The administrator did not indicate whether asphalt plants were also included within the industrial activity definition.

The DOE concluded that the proposed siting and operation of an asphalt plant was not solely a mining activity (Section 15.04.010) and the development would be subject to industrial activity regulations (Section 15.12.010). Because the development was an industrial activity not permitted in a conservancy environment, the conditional use permit was denied.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The YCMP mining regulation (Section 15.04.010) allows processing of naturally occurring material from the earth as a conditional use in the conservancy environment. Appellant's proposed asphalt batch plant operation involves the combination of processed, naturally occurring material from the earth, i.e., crushed rock, with heat and asphalt (a

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petroleum product), imported to the site. Asphalt concrete cannot be processed from naturally occurring materials from the earth at appellant's site. The asphalt plant portion of the total intended operation goes beyond the definition of "mining" in either the policy or regulation definitions of the YCMP. On the other hand, the asphalt concrete operation comports more with "processing" or "manufacturing" of "raw materials or finished products." This describes "industrial activities" in Section 15.12.010.

II

We conclude that the language used in the YCMP is clear and that the proposed substantial development is a "industrial activity" and not a "mining activity" within its provisions. Consequently, appellant cannot establish an asphalt plant on the shorelines within conservancy environment designation through a conditional use permit. Accordingly, the DOE's disapproval of the conditional use permit should be affirmed.

III

In view of our disposition of this matter, we need not rule on the County's motion or address the remaining contentions.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

. ORDER

The action of the Department of Ecology disapproving the

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conditional use permit issued by Yakima County to Gene Bohannon is hereby affirmed.

DATED this 4th day of December, 1979.

SHORELINES HEARINGS BOARD

NAT W. WASHINGTON, Chairman

CHRIS SMITH, Member

RODNEY KERSLAKE, Member

DAVID AKANA, Member

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