

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**

**APR 28 1987**

Terri A. [unclear], Adm. Aide  
Environmental Quality Council

IN THE MATTER OF OBJECTIONS )  
TO THE APPLICATION OF A )  
SMALL MINING PERMIT BY )  
PETER A. HANSEN, TFN 2 6/20 )

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-entitled matter came before the Environmental Quality Council for hearing on November 25th and November 26, 1986 in Jackson Hole, Wyoming. Peter A. Hansen, hereinafter referred to as the Applicant, appeared and was represented by R. Michael Mullikin. The Protestants, Robert A. Esperti & Lisbeth J. Esperti, appeared and were represented by Robert A. Esperti. The Protestant, Clay James of Grand Teton Lodge Company, appeared on his own behalf. The Protestants, Donald L. Lucas, and Walter L. & Shelia E. Weisman, appeared by and through their attorney, William L. Simpson. The Protestant, the County of Teton, appeared by and through the Deputy County Attorney, Paul O. Vaughn. The Protestants, Jeanne Aitchison, Elizabeth C. Aschauser, Dorothy Brooks Betts, Robert B. Betts, Jr., Robert B. & Emily W. Betts, Connie Braz, Tulley D. Bryant, Chuck & Maria Cantonwine, James Walter & Anne Betts Charleston, Richard W. Cree, William & Martelia Curry, Sophie B. Echeverria, Andrew & Wynne Gensey, Robert E. Hansen, Richard D. Huseth, Duane S. Kent, Robert & Dianne Cooper Kirk, Mrs. Kennard F. Lange, Don & Jean Longenecker, John & Nancy Love, Tim Mayo & Rosie Bucciarelli Mayo, Rohn & Ondrea McKee, Dr. Albert V. & Kathryn K. Metz, Jr., Anthony J. Nicoli, David & Penelope Ogle, William F. Pabst, Jr., Greg & Peggy Prugh, Kathleen Ramee, Robert L. & Patricia J. Refvem, Robert G. & Barbara J. Rohwer, Norman B. Roland, M.D., Clyde W. Sissman, Jr., Thomas S. & Mary Ann Teetor / Elbacaru, Ltd., Geo. L. Verity, Harry Wm. Weisbrod, Arthur M. Wilkof, appeared by and through their attorneys Warren W. Dill and Edward F. Hess.

The Protestants, Mike & Mary Harschlip, Mr. & Mrs. Robert White, Ted & Christine Mollring, Sally Brooks, Randall C. Sultan, Clovis Rodelandier, Tom & Lorraine Sheppard, Tulley D. Bryant, Mr. & Mrs. Bert Perrin, James A. Maggetti, Dr. & Mrs. James Pugh, Frederick A. Schwertz, John A. & Joan C. Peterson did not appear at the hearing. Having considered the evidence before it and the arguments of Council, the Environmental Quality Council hereby finds and concludes as follows:

FINDINGS OF FACT

1. Peter A. Hansen filed an application with the Department of Environmental Quality, Land Quality Division, for a small mining permit designated by the Temporary Filing No. 2 6/20.
2. The Applicant seeks a permit to mine a parcel of land located in the S½NW¼ of Section 33, T42N, R116W, 6th Prime Meridian, Teton County, Wyoming. The area to be included in the mine permit totals 52.94 acres.
3. Pursuant to Section 35-11-406, W.S. 1977, As Amended, timely objections were filed to the issuance of Permit No. TFN 2 6/20 by the above Protestants.
4. The following individuals filed protests which were not timely: Jim & Sally Allen, C. J. Aschauser, Mr. & Mrs. Burke Baker, Jr., Edward B. & Judith M. Bunnell, Lester & Margrit Hammar, The Jackson Hole Alliance for Responsible Planning, Charles Byron & Jeanne S. Jenkins, Kathryn Kent, George C. Kuhlman, Jr., Gary E. Mintz, Robert C. & Shirley E. Schwall, Jane B. Semen, Julian S. & Elizabeth Stoutamyer, H. C. & J. J. Wagner, James N. & Jane F. Wheeler.
5. Pursuant to Section 35-11-406(k), the hearing was held within twenty (20) days of the final date for filing objections to the mining permit, that is within twenty (20) days of November 17, 1986.
6. The Applicant owns land that is to be included within the proposed small mining permit and which is currently being mined pursuant to a 10-acre exemption. The permit for this 10-acre exemption is No. 399ET.

7. The Applicant also owns land that is to be included within the proposed small mining permit and which is currently being mined by Burggraf Construction Company pursuant to a 10-acre exemption. The permit for this 10-acre exemption is No. 604ET.

8. The area mined under Permit No. 399ET, and the area mined under Permit No. 604ET are adjacent properties and both mines are operated by Burggraf Construction Company.

9. The mine operated under Permit No. 399ET and the mine operated under Permit No. 604ET are in all respects indistinguishable, have merged, and therefore the Council specifically finds that these two mines are in fact one operation.

10. The mine operated under Permit No. 399ET and the mine operated under Permit No. 604ET both produce the same minerals or product, that is, sand and gravel.

11. Chapter XX of the Department of Environmental Quality, Land Quality Division Rules and Regulations, 1986, Section 6.a. provides that "The operator will not be allowed to:

(1) Conduct more than one (1) operation under W.S. 35-11-401(d)(vi) within adjacent areas when the operations are to mine the same minerals, or

(2) Conduct nearby operations of ten (10) acres or less so as to circumvent the general requirements of the Environmental Quality Act."

12. The Applicant's proposed operation, as well as the current operation, is located north of the town of Jackson, and is in a residential area.

13. The Applicant currently uses, and will use in the proposed mining operation, a road named the Kings Highway, for trucks traveling to and from the gravel pit.

14. Testimony was undisputed that the County of Teton does not maintain the Kings Highway and has not designated the road as a county road.

15. Chapter XX of the Land Quality Rules and Regulations 1986, Section 1.a.(6)(b)(iii) provides that existing or proposed access haul roads into, or away from, the proposed mining operation shall be included as part of the 10-acre exemption unless they are maintained by a county, state, or federal government.

16. The Kings Highway was not included in the 10-acre exemptions, permitted as 399ET and 604ET.

17. A cluster of buildings, some of which are used by Burggraf Construction, is adjacent to the two, 10-acre mines.

18. The witnesses were uncertain as to whether any of the area affected by the buildings is included in the 10-acre permits, Nos. 399ET and 604ET.

19. Section XX, Land Quality Rules and Regulations, 1986, requires that all affected land be included within the permit areas.

20. Chapter IV of the Land Quality Rules and Regulations, 1986, Section 2.(j) provides that constructed or upgraded roads shall be included within the permit area from the point they provide exclusive service and shall be covered by a reclamation bond.

21. The Kings Highway was not included in the small mining permit application, TFN 2 6/20, and the evidence indicated the Applicant's operation will affect the road surface.

22. A second road to be used by trucks traveling to and from the gravel pit is known as Spring Gulch Road, and this road has been designated as a scenic road by the County Commissioners of Teton County.

23. The scenic designation of Spring Gulch Road by the Teton County Commissioners gives the County Commissioners the option of not upgrading Spring Gulch Road if such action will interfere with the scenic aspects of the road.

24. Spring Gulch Road is a narrow road in that it is only twenty (20) feet in width, and it has no shoulder areas for pedestrians, joggers, or bicycles.

25. Spring Gulch Road is lined by trees and shrubbery which limits the line of sight of drivers on the road.

26. Spring Gulch Road has one 90° curve which must be negotiated by the gravel trucks.

27. Along Spring Gulch Road and Kings Highway there are numerous residences, a golf course which straddles the road so as to require golfers and carts to cross the road, a club house, tennis courts, a swimming pool, and a restaurant.

28. Spring Gulch Road and Kings Highway are used extensively not only for residential traffic and tourist traffic, but also by joggers, bicyclists, golfers, and children using the facilities at the Jackson Hole Golf and Tennis Club.

29. Testimony was undisputed that the current truck traffic, and any increase in truck traffic, on the Spring Gulch Road presents a distinct safety hazard to all those who use the road.

30. Although the proposed gravel operation may not be operating each day of the construction season, testimony demonstrated that this residential area has been disrupted by the noise, traffic, odors, and dust from the current operations.

31. Teton County has developed the Teton County Comprehensive Plan to guide development in that county, and pursuant to this plan has zoned the area of the current operations and the proposed operation as residential.

32. As Teton County's ability to limit mining activities is circumscribed by §18-5-201, W.S. 1977, Teton County sought the denial of this permit in order to enforce the County's Comprehensive Plan.

33. Section 35-11-406(b)(xiii) states that a mining application shall include, "The procedures proposed to avoid constituting a public

nuisance, endangering the public safety, human or animal life, property, wildlife and plant life in or adjacent to the permit area...  
."

#### CONCLUSIONS OF LAW

1. The Environmental Quality Council has jurisdiction over the parties and subject matter of this hearing.
2. Objections to this permit were filed in a timely manner pursuant to Section 35-11-406(k).
3. The operation of the 10-acre exemptions of Peter A. Hansen and Burggraf Construction Company, known as Permits No. 399 ET and 604 ET respectively, as a single operation is in violation of the law, specifically Section 6.a. of Chapter XX, Land Quality Rules and Regulations, 1986.
4. The Permits No. 399ET and 604ET violate Section 1.a.(6)(b)(iii), Chapter XX, Land Quality Rules and Regulations, 1986.
5. The Permits No. 399ET and 604ET may not include all affected area as required by Chapter XX, Land Quality Rules and Regulations, 1986.
6. The application for the small mining permit, Permit No. TFN 2 6/20 is incomplete as it does not include roadways that will be affected by the operation and are not maintained by the county, state, or the federal government.
7. The application for a small mining permit, TFN 2 6/20 does not contain adequate procedures to avoid constituting a public nuisance, or endangering the public safety, human or animal life, property, wildlife and plantlife in or adjacent to the permit area.
8. The operation proposed in the small mining permit applicaton, TFN 2 6/20 will constitute a public nuisance and endanger the public health and safety.
9. The Applicant has not met its burden of demonstrating that the proposed operation is in compliance with all applicable statutes and regulations.

10. The Protestants have met their burden of going forward with evidence that the proposed operation is not in compliance with all applicable statutes and regulations.

11. All parties who did not appear did not meet their burden of going forward with evidence on their protests and should be dismissed from the case.

#### ORDER

Based upon the above Findings of Fact and Conclusions of Law, the Environmental Quality Council hereby orders that:

1. The permit, TFN 2 6/20 should be and is hereby denied, and

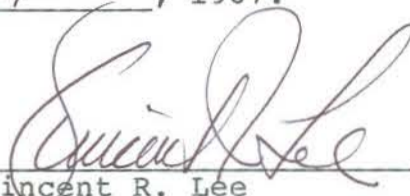
2. The Department of Environmental Quality take steps to bring the current operation of the 10-acre permits, No. 399ET and 604ET, into compliance with the applicable laws.

3. The following persons filed protests which were not timely and therefore they should be and are hereby dismissed from the case: Jim & Sally Allen, C. J. Aschauser, Mr. & Mrs. Burke Baker, Jr., Edward B. & Judith M. Bunnell, Lester & Margrit Hammar, Jackson Hole Alliance for Responsible Planning, Charles Byron & Jeanne S. Jenkins, Kathryn Kent, George C. Kuhlman, Jr., Gary E. Mintz, Robert C. & Shirley E. Schwall, Jane B. Semen, Julian S. & Elizabeth Stoutamyer, H. C. & J. J. Wagner, and James N. & Jane F. Wheeler.

4. The following persons filed protests, but failed to appear at the hearing and therefore they should be and are hereby dismissed from the case: Mike and Mary Harschlip, Mr. & Mrs. Robert White,

Ted & Christine Mollring, Sally Brooks, Randall C. Sultan, Clovis Rodelandier, Tim & Lorraine Sheppard, Tulley D. Bryant, Mr. & Mrs. Bert Perrin, James A. Maggetti, Dr. & Mrs. James Pugh, Frederick A. Schwertz, and John A. & Joan C. Peterson.

DATED this 24th day of April, 1987.

  
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Vincent R. Lee  
Hearing Examiner



CERTIFICATE OF SERVICE

I, Terri A. Lorenzon, certify that at Cheyenne, Wyoming, on the 28th day of April, 1987, I served a copy of the foregoing Findings of Fact, Conclusions of Law and Order, by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

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