

APR 16 1992

THURSTON REGIONAL
PLANNING COUNCIL**OFFICE OF THE HEARING EXAMINER FOR THURSTON COUNTY**

RE: Special Use Permit)
Application of Neilsen) **FILE NO. SUP-03-91**
Pacific Limited to expand)
the existing Holroyd)
Gravel Mine by 140 acres.) **FINDINGS, CONCLUSIONS,**
) **AND DECISION**
)
)

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant is seeking approval of a Special Use Permit to add 140 acres to an existing sand and gravel mining operation known as Holroyd Gravel Mine.

Decision: Approval, subject to conditions.

**FINDINGS OF FACT
BACKGROUND INFORMATION**

Applicant: Neilsen Pacific Limited

Applicant's Address: P.O. Box 39009, Tacoma, WA 98439 c/o Steven Neilsen

Property Address: Not Available

Property Location: On the south side of Reservation Road between Old Pacific Highway and the Burlington Northern Railroad right-of-way.

Legal Description: Portions of Sections 17, 18, and 20, Township 18 North, Range 1 East, W.M.

Zoning: Residential -- One Dwelling Unit Per Five Acres

Comprehensive Plan Map Designation: Rural

Property Description: The property is described in the Planning Department Report and Recommendation (Exhibit 1). The Hearing Examiner hereby adopts that description.

Surrounding Conditions: Surrounding conditions are described in the Planning Department Report and Recommendation (Exhibit 1). The Hearing Examiner hereby adopts that description.

Project Description: The project is described in the Planning Department Report and Recommendation (Exhibit 1). The Hearing Examiner hereby adopts that description.

PROCEDURAL INFORMATION

Authorizing Ordinances: TCC 2.06 and 20.54

Hearing Date: March 16, 1992

Notices:	Mailed:	March 4, 1992
	Posted:	March 4, 1992
	Published:	March 4, 1992 (<u>The Olympian</u>)

Site Visit: None made.

SEPA: A Mitigated Determination of Nonsignificance was issued for the project on January 24, 1992. It became final on February 10, 1992.

Testimony:

Michael Kain, Thurston County Planning Department, summarized the Planning Department Report and Recommendation. Mr. Kain identified several conditions that the planning staff felt should be changed from the conditions originally recommended in the Planning Department Report and Recommendation. Mr. Kain recommended that Recommended Condition C be changed to only require the applicant only to close off access points with locked gates and to post warning signs around the perimeter of the site rather than to fence the entire site. He stated that this change was appropriate in light of the fact that there are no residences nearby the site and that there are not likely to be any in the near future.

Mr. Kain also testified that the Planning Department is now recommending that the originally recommended Condition E be modified to more specifically identify the extent of landscaping required along Old Pacific Highway. Mr. Kain testified that Condition M should be modified to include the statement that any subsequent use of the site must incorporate appropriate aquifer protection measures.

In response to testimony given by the applicant's representative, Mr. Sandy Mackie, Mr. Kain testified that the Planning Department would not object to its Recommended Condition H being modified to eliminate any automatic termination date for the mine, and, instead allow the Hearing Examiner to terminate the use at the time of periodic reviews of the mining operation or at any other time when it becomes apparent conditions of approval are being violated. Also, in response to testimony by the applicant's representative, Mr. Kain testified that the Planning Department would not object to Recommended Condition O being modified to state that all berm on the size of the site after reclamation shall be a minimum 1.75:1. Mr. Kain testified that the Planning Department would not object to language being added to Condition E to still further clarify the buffering requirements along Old Pacific Highway. He also stated that the Planning Department would not object to the final sentence in Condition F stating "in

no case shall the berm or fence be placed closer than 75 feet - from the property lines" being struck from the condition.

Richard Kern, Thurston County Public Works Department, testified on behalf of the Public Works Department about storm drainage requirements.

Sandy Mackie, Attorney, testified on behalf of the applicant. Mr. Mackie testified to the following: There will be some initial increase in the amount of traffic along Pacific Highway between the new entrance and the existing entrance. The two entrances are separated by about a quarter of a mile. The applicant agrees with the change to Condition C recommended by the Planning Department. There are no residences in the immediate area and there are not likely to be any in the near future. Most of the land is used for agriculture and is identified as agricultural or mineral resource land by the proposed Nisqually Sub-area Plan. The applicant believes it is necessary to provide further clarification to Planning Department Recommended Condition E to identify where the buffering along Pacific Highway must be provided. The applicant is concerned about the requirement by the Planning Department that the applicant place any berms and fencing 75 feet inside the property line. The applicant is concerned that if that occurs, people will use the area between the property line and the fence or berm for dumping garbage. The applicant has had some problem with people dumping garbage on the property in the past. The applicant does not believe that it is in the applicant's or the County's interest to require a 10-year termination date. The same result that such a termination date seeks to accomplish can be accomplished by simply giving the Hearing Examiner the authority to terminate the use at either the periodic review provided Planning Department Recommendation or at any time that conditions of approval are being violated. The applicant requests that Condition O be modified to state that the minimum side slopes for the reclamation site shall be 1.75:1 rather than 2:1.

In response by the Hearing Examiner regarding covering the loads, Mr. Mackie stated that the applicant does not cover now, and that has not been a problem in the past. Claims have been filed against the applicant for damage by rocks flying out of the trucks when the trucks are moving along the highway. The trucks will be watered to control dust.

Exhibits:

1. Thurston County Report and Recommendation
2. Amended Planning Department Recommended Conditions of Approval
- 3a. Current Topography Map
- 3b. Map showing stages of mining
- 3c. Map showing final Reclamation Plan
- 3d. Reclamation Cross Sections
- 4a. Environmental checklist
- 4b. Letter from Sandy Mackie to Paula Ehlers, Thurston County Environmental Review Officer, regarding screening of site
- 4c. Mitigated Determination of Non significance issued for project
5. Health Department comments
6. Public Works Department Comments
7. Zoning Map

FINDINGS AND CONCLUSIONS

To be approved, the proposed use must comply with all of the criteria set forth in TCC 20.54.040. These criteria are set forth in Exhibit A, attached to this decision, and, by this reference, incorporated herein. The Hearing Examiner has reviewed the proposal and the evidence of record with regard to this section and makes the following findings and conclusions:

1. The proposed use complies with Thurston County Comprehensive Plan and all other applicable Federal, state, regional, and Thurston County laws or plans.

The Planning Department Report and Recommendation identifies the policies, the Comprehensive Plan, the Lacey Environs Sub-area Plan, and the proposed Nisqually Sub-area Plan that applied to the proposed use. The Hearing Examiner concurs with the Planning Department that the identified policies do apply to the proposed use. The Hearing Examiner further concurs with the Planning

Department that the proposed will be consistent with these policies so long as the conditions of approval recommended by the Planning Department are satisfied.

The proposal complies with the Thurston County Zoning Ordinance. The property is zoned Rural Residential -- One Dwelling Unit Per Five Acres. TCC 20.54.070 identifies mineral extraction as a use allowed by Special Permit in the Rural Residential - One Dwelling Unit Per Five Acre zoning district. As is discussed below in paragraph two, the proposed use will comply with the general purposes and specific requirements of the Rural Residential -- One Dwelling Unit Per Five Acres zoning district. As is discussed in paragraph five below, the use will comply with the specific standards applied to mining activities as set forth in TCC 20.54.070(21).

The proposal will comply with all other applicable laws and regulations. Pursuant to state law, the applicant is required to obtain a Department of Natural Resources of Surface Mining Permit prior to any activity occurring on site. The applicant is also required to obtain permits from the Air Pollution Control Authority. This decision will require the applicant to provide proof to the County that it has obtained such permits.

2. The proposed use complies with general purposes and specific requirements of the zoning district.

As is in stated above, the property is in the Rural Residential - One Dwelling Unit Per Five Acres zoning district. This zoning district is governed by TCC Chapter 20.09. TCC 20.09.010 states that the purpose of the district is:

To assist in maintain the commercial timber industry and to protect the public health in areas with severe soil limitations for septic system, several limited water supply, aquifer recharge, and floodplains.

The proposal is consistent with this purpose. It will not interfere with commercial timber activities. A septic system will not be necessary to serve the property. There is no evidence in the record to suggest that the use will in any way affect a limited water supply. The aquifer in the area will not be disrupted as a result of the proposal. The aquifer will not be penetrated. Storm drainage and erosion control measures that will be imposed upon the applicant will protect the aquifer from being polluted by storm water or the residue carried in storm water.

The general designs standards of the zoning district do not apply to the use because no permit structures will be placed on the property. However, all activities that will occur on-site will far exceed all the minimum design standards.

3. The proposed location for the use is appropriate, considering its impact on adjacent property, the character of the neighborhood, the natural environment, traffic conditions, parking, and public property and facilities.

The proposed use will have negligible impact on its surroundings. There are no residences near the proposed mining site that could be disturbed by the proposed mining activity. The applicant will provide substantial buffers to ensure that the site is not visible from public view. Consequently, the use will not have an adverse aesthetic impact on the area. The use will not generate a significant amount of traffic above what is already generated by the existing mining site. There may be some additional trucks placed on Pacific Highway between the existing mine entrance and the proposed new mine entrance. This area covers only about a quarter of a mile, and the number of trucks will be small.

The mine will not result in air pollution. This decision will require the use to comply with the requirements of the Olympic Air Pollution Control Authority. It will also require the applicant to take measures to control dust at the mine site and on trucks carrying gravel and sand. The applicant has stated that it is willing and able to comply with these conditions to control air pollution.

The use will not result in excessive noise. This decision will require the proposal to comply with the requirements of WAC 173-060, which establishes maximum noise levels for uses such as the proposed use.

Beyond imposing specific conditions of operation on the proposed mining activity, this decision includes a condition that will allow the Hearing Examiner to review the operation every five years. This condition will give the Hearing Examiner the authority to impose additional conditions if it proves to be necessary. It will also grant the Hearing Examiner the authority to terminate the use if it appears that conditions of approval are being violated or if it appears that the impact of the use cannot be adequately mitigated by imposing conditions of approval. The use will not have an adverse effect upon the surrounding area once the mining operation is completed. Both by state law and County regulations the applicant will be required to reclaim the site. This decision also includes conditions that require the applicant to reclaim the site.

4. The proposed location for the use is appropriate, considering the availability and adequacy of necessary public services.

Public services and facilities are generally not needed for the site. Old Pacific Highway is adequate to accommodate the small amount of additional traffic that will be generated by the use.

5. The proposed use complies with all of the requirements and standards that apply to it specifically.

The consistency of the proposal with the specific standards that apply to mining operations is discussed in the Planning Department Report and Recommendation. The Hearing Examiner hereby adopts the findings and conclusions of the Planning Department noting that the Planning Department no longer believes that it is necessary for the applicant to install a fence around the perimeter of the site because there are no residences in the immediate area and are not likely to be any in the near future. The Hearing Examiner agrees with the Planning Department that a fence is not necessary at this time. Because this decision will provide for a periodic review of the proposal, it leaves open the possibility of requiring a fence in the future if one proves to be necessary.

6. The sign proposed for the use complies with the requirements of TCC 20.54.

The applicant has not proposed any signs for the use. This decision includes the condition that requires the applicant to obtain approval from the Planning Department prior to placing any signs on the property.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to **APPROVE SUP-03-91** subject to the following conditions:

1. Prior to the commencement to any mining operations the applicant shall demonstrate to the satisfaction of the Thurston County Planning Department that the applicant has satisfied all applicable regulations and requirements of the Washington State of Natural Resources, Washington State Department of Transportation, the Thurston County Health Department, the Thurston County Public Works Department, and the Mitigated Determination of Nonsignificance issued for the project.
2. Permitted on-site operational machinery and structures shall be limited to loaders, trucks, hoppers, conveyers, and Health Department approved portable sanitary waste facilities.
3. For safety reasons, the applicant shall close off all access points with locked gates and post warning cites in conspicuous places around the perimeter of the site. The warning signs shall include warnings in both written and graphic forms. The signs shall be approved by the Thurston County Planning Department.
4. To mitigate any noise that might be generated by the use, the applicant shall install a berm around the parameter of the site, except along Old Pacific Highway and except at entrances to the site. The berms shall be at least eight feet high and shall comply with the requirements of the Thurston County Zoning Ordinance.
5. The applicant shall maintain a 100 foot buffer of existing vegetation beginning at the edges of the rights-of-way of Old Pacific Highway and Reservation Road and extending into the proposed gravel operation. The buffer along Old Pacific Highway shall be installed along the frontage of both the proposed mine and the existing mine. Access points, including the access point from Reservation Road to the south-end of the existing plant, may be excluded from the buffering requirement. In areas where the vegetation within the 100 foot buffer permits viewing of mine activities from the right-of-way, the applicant shall plant landscaping to

obscure the view. Any berm planted along Reservation Road shall be planted with native vegetation. The location of any fence along either Reservation Road or Old Pacific Highway shall be approved by Thurston County.

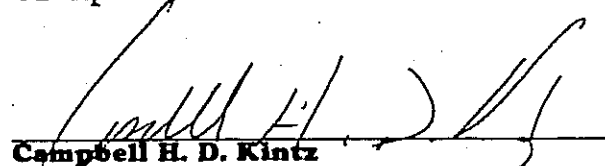
6. The applicant shall maintain a 100 foot setback from all other property lines. No gravel, trees, or ground cover shall be removed from within the required setback, except that ground cover may be removed to place a berm or fence within the required setback area. All vegetation removed from the required setback area shall be replaced with native vegetation. Berms placed within required setbacks shall be landscaped with native vegetation.
7. Access to the site will be limited to one point along Old Pacific Highway. It shall be at least 300 feet from any other access point along the project side of the road.
8. This Special Use Permit shall be effective indefinitely. It shall be reviewed by the Hearing Examiner five years from the date of this decision and every five years thereafter. At the time of such review, the Hearing Examiner may impose additional conditions upon the operation of the use if the Hearing Examiner determines it is necessary to do so to mitigate the impact of the use. At the time of the review, the Hearing Examiner may also terminate the use if the Hearing Examiner determines that conditions of approval have been violated or if the Hearing Examiner concludes that adverse impacts of the use cannot adequately be mitigated by existing or additional conditions of approval.
9. All lighting for the use shall be limited to low intensity lights. They shall be shielded and directed so that illumination affects only the premises of the permit and does not result in glare onto other property or public rights-of-way.
10. The applicant shall obtain all required permits from the Olympic Air Pollution Control Authority and shall comply with all of the requirements of the Olympic Air Pollution Control Authority.
11. During dry periods and all other times when necessary, the applicant shall take appropriate measures to control dust created by activities on the site and generated by trucks hauling materials from the site. The applicant shall wash the trucks before they leave the site in order to limit the amount of mud and dirt placed on public rights-of-way by the trucks.

12. The maximum number of signs that the applicant may place on the property shall be one. The sign shall not exceed 32 square feet in size. It may be placed at the new entrance to the site of Old Pacific Highway.
13. The Reclamation Plans shall include but not be limited to replanting trees and placing vegetative ground cover. Any subsequent use of the site must incorporate appropriate aquifer protection measures. This conditions do not preclude other reclamation measures required by the Washington Department of Natural Resources to the issuance of a Surface Mining Permit. Rather, they are intended to supplement any condition that might be imposed through such permit.
14. The floor of the extraction area shall be designed and maintained in such a manner that storm water drainage will be retained on-site. The applicant shall submit a storm drainage plan to Thurston County. The storm drainage plan and all installed storm drainage improvements shall comply with the "Drainage Design and Erosion Control Manual."
15. All slopes on the sides of the site after reclamation shall be a minimum of 1.75:1.
16. A revised contour plat conforming to the requirements of TCC 20.54.070(21)(j) shall be submitted to and approved by the Thurston County Planning Department prior to the commencement of mining activities.
17. Hours of operation shall be unlimited so long as noise levels are in compliance with WAC 173-060. Noise levels shall be monitored by the applicant at the property lines of the Phase II site at least quarterly after the initiation of the mining activity and until such time as the Planning Department determines that such monitoring is no longer necessary. The reports shall be submitted to the Planning Department. If the noise levels exceed the levels permitted by WAC 173-060, the Planning Department may impose limitations on the hours of operation, or may require to take appropriate measures to mitigate the noise so that the noise levels do comply with WAC 173-060.
18. The applicant shall provide at least one off-street for each employee and two additional parking spaces for visitors. The applicant shall mark all parking places with paint, bumper stops, wheel chocks, or curbing.
19. There shall be no mining activity within the aquifer. All mining activities shall comply with all aquifer protection

measures specified by the Thurston County Environmental Health Department or the State Department of Ecology.

20. The operation of the facility shall be consistent with the approved site plan.
21. This Approval is subject to the above stated conditions. By accepting this approval, the applicant acknowledges that these conditions are reasonable and agrees to comply with them. The property may not be developed except in accordance with these conditions, and failure to comply with them may result in the revocation of this Approval.

DATED this 15th day of April, 1992.


Campbell H. D. Kintz
Hearing Examiner for Thurston County

A copy or notice of this decision was transmitted on the 17th day of April, 1992, by the Thurston County Planning Department to the following:

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