

**A BEFORE THE HEARINGS EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	Project No. 2003100090
	)	Sequence No. 03-101676 ZM
<b>Nielsen Pacific, Ltd.</b>	)	
	)	FINDINGS, CONCLUSIONS
For Approval of a Special Use Permit	)	AND DECISION
<u>5 Year Review</u>	)	

**SUMMARY OF DECISION**

A five-year review of the approved Special Use Permit (SUP 3-91) as amended by SUP 97-0412 for continued operation of a gravel mining facility is **GRANTED**, subject to conditions.

**SUMMARY OF RECORD**

**Request**

Nielson Pacific, Ltd. (Applicant) requested a five-year review of SUP 3-91, pursuant to the permit's Condition Number 8. According to the condition the Applicant must submit its gravel mine operation to review by the Thurston County Hearings Examiner every five years (Findings, Conclusion, and Decision, dated April 15, 1992.) The first five-year review of SUP 03-91 was approved in 1998 (SUPT 97-0412). The purpose of the present five-year review is to determine whether Applicant is in compliance with the conditions of the Special Use Permits, and to determine whether the conditions of the said permits are adequate to mitigate the impacts of the mining operation. The review also considers whether the mining operation is operating consistent with conditions of SUP 010049, approved in 2001 and amending SUPs 3-91 and 010049. The mining operation is located at 1048 Old Pacific Highway, Thurston County, Washington.

**Hearing Date**

An open record public hearing on the request was held before the Hearings Examiner of Thurston County on November 3, 2003.

## **Testimony**

At the open record hearing, the following individuals presented testimony under oath:

Tony Kantas, Thurston County Development Services Department  
Alexander Mackie, Applicant Representative  
Howard Glastetter, citizen

## **Exhibits**

At the hearing the following exhibits were submitted and were admitted as part of the official record:

EXHIBIT 1 Development Services Planning & Environmental Section Report including the following attachments:

- Attachment a Notice of Public Hearing, dated October 21, 2003
- Attachment b Special Use Permit Application, dated June 5, 2003
- Attachment c Site Plans Illustrating Permitted Area
- Attachment d Site Plans Illustrating the Required Buffers
- Attachment e Vicinity Map, dated June 5, 2003
- Attachment f Hearing Examiner "Findings, Conclusions, and Decision," dated April 15, 1992
- Attachment g Comment Memorandum from Arthur Saint, Thurston County Roads and Transportation Services Department, dated October 22, 2003

EXHIBIT 2 Comment Letter from John Ward, Thurston County Environmental Health Department, dated October 31, 2003

EXHIBIT 3 Comment Email from Howard Glastetter, dated October 29, 2003

EXHIBIT 4 Comment Letter from Thomas Cook, dated October 31, 2003

EXHIBIT 5 Findings, Conclusions and Decision for case SUPT 97-0412, Five year review, dated February 3, 1998

EXHIBIT 6 Findings, Conclusions and Decision for case SUPT 010049, Amendment to SUPT 3-91 and SUPT 97-0412, dated August 24, 2001

Based upon the record developed at the open record public hearing, the Hearings Examiner enters the following Findings of Fact and Conclusions:

### FINDINGS OF FACT

1. On April 15, 1992, a Special Use Permit (SUP 3-91) was issued for a gravel mining operation located at 1048 Old Pacific Highway, Thurston County, Washington.<sup>1</sup> Condition (8) of the approved permit required a five-year review of the SUP to determine whether Applicant remains in compliance with conditions of approval for the SUP and to determine whether the conditions of said permit are adequate to address the impacts of the mining operation. The permitted operation was Phase II of the Holroyd Gravel Mine, consisting of 130 acres. The subject property is southeast of Old Pacific Highway SE and south of realigned Reservation Road SE. *Exhibit 1, Staff Report, page 2; Testimony of Tony Kantas; Exhibit 5, Hearing Examiner Findings, Conclusions, and Decision SUPT-97-0412, dated February 3, 1998; Exhibit 6, Hearing Examiner Findings, Conclusions, and Decision, SUPT-01-0049, dated August 24, 2001.*
2. Phase I of the gravel mine is the oldest mine in the state of Washington and predates all County Ordinances that regulate mining activity. Phase I, located north of Reservation Road, is considered a vested mine that is not subject to current County standards. *Exhibit 1, Staff Report, pages 1 & 2.*
3. The subject property is zoned Rural Residential—One Dwelling Unit per Five Acres (RR 1/5). Surrounding land uses consist of the existing mine operation to the north; forestland, a large farming operation and a private lake and campground to the east; forest and farmland to the south; and farmland to the west. Mineral extraction activities are permitted in a RR1/5 zone with a special use permit. The Washington State Department of Natural Resources must also approve a reclamation plan for the site. *Exhibit 1, Staff Report, page 2.*
4. On February 3, 1998, the Hearing Examiner of Thurston County issued approval of a five-year review (SUPT-97-0412) of the original SUP. While the original permit was not reviewed under the County Mineral Extraction Ordinance (Chapter 17.20, adopted 1993), SUPT-97-0412 was reviewed for consistency with the Mineral Extraction Ordinance. *Exhibit 1, Staff Report, page 2; Testimony of Tony Kantas; Exhibit 5, Hearing Examiner Findings, Conclusions, and Decision SUPT-97-0412, dated February 3, 1998; Exhibit 6, Hearing Examiner Findings, Conclusions, and Decision, SUPT-01-0049, dated August 24, 2001.*

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<sup>1</sup> The property is described in part as a portion of Section(s) 17, 18, and 19 Township 18 North, Range 1 East, WM, also known as Tax Parcel Nos. 09640009000, 09640010000, 09640011000, 21817330000, and 21820220000.

5. Based on the County's inspection of the site Phase II has been actively mined since the last five-year review (SUPT-97-0412). Approximately 500,000 cubic yards of gravel has been excavated from the site during the intervening five years. *Exhibit 1, Staff Report, page 3.*
6. Both SUP-3-91 and SUPT-97-0412 were amended by approval of SUPT-01-0049. The amendment transferred approximately 10 acres from approved Phase II mining plan to Phase I, the vested mine North of Reservation Road. The amendment to the SUP was in conjunction with Thurston County's plan to realign Reservation Road. *Exhibit 1, Staff Report, pages 3-4; Exhibit 6, Hearing Examiner Findings, Conclusions, and Decision, SUPT-01-0049, dated August 24, 2001.*
7. Condition Number 5 of SUP-03-91 required the Applicant to maintain a 100 foot vegetated buffer along the right-of-way of Old Pacific Highway and along the south side of Reservation Road. No setback was required along the north side of Reservation Road because it abutted Phase I of the mine, which was not subject to regulation. The realigned Reservation Road encroached about 50% into the Phase II 100-foot buffer. As an alternative mitigation for the Phase II mining activity, Applicant proposed a ten-foot high, fifty-foot wide vegetated berm to run the length of realigned Reservation Road along both the north and south sides of the mining operation, notwithstanding that there is no requirement that Applicant mitigate any impacts of the Phase I mine (the north side of the newly realigned road). *Exhibit 1, Staff Report, pages 3-4; Exhibit 6, Hearing Examiner Findings, Conclusions, and Decision, SUPT-01-0049, dated August 24, 2001.*
8. Although Thurston County Code (TCC) provides that no extraction shall be conducted closer than 100 feet to any property boundary, the approval authority (Hearing Examiner) may reduce the setback if the property is designated resource lands of long-term commercial significance. TCC 17.20.230. The subject was designated resources lands of long-term commercial significance by the Hearing Examiner in SUPT 01-0049. *Exhibit 6, Hearing Examiner Findings, Conclusions, and Decision, SUPT 01-0049, dated August 24, 2001, page 4.*
9. Current land use on the subject property consists of surface mineral extraction with no current proposals for expansion. Limited equipment is stored on site and there are no structures on site. Little or no hazardous material is used or stored and there is no water supply on site. No crushing, washing, screening, or asphalt/concrete batching occurs on the subject property (these activities are conducted on Phase I property). There is no water supply to the site. *Exhibit 2, Thurston County Public Health and Social Services Department comment letter, dated October 31, 2003.*
10. Pursuant to the State Environmental Policy Act (SEPA), Thurston County was designated as the agency for identification of environmental impacts resulting from the project. The initial mitigated Determination of Non-Significance (MDNS) became final on February 10, 1992. Another MDNS was issued on June 5, 2001 and became final on June 19, 2001

for the amendments of SUP –3-91 and SUPT-97-0412. A new MDNS is not required for this five-year review. *Exhibit 1, Staff Report, page 3.*

11. The site, within an aquifer sensitive area, is located approximately 4,000 feet from the City of Olympia's McAllister Springs pumping station, the source of drinking water for the City. This area was included in the MDNS review that included conditions for erosion control, stormwater requirements, critical areas protection, and reclamation requirements. The site is also located within a designated Mineral Resource Area. Due to the limited operations on site and that there is no mineral extraction occurring into the ground water table, no batch plant operations, washing, nor ground water monitoring plan is required at this time. *Exhibit 1, Staff Report, page 2; Exhibit 2, Thurston County Public Health and Social Services Department comment letter, dated October 31, 2003.*
12. Applicant's five-year review application has been evaluated by the County and determined to be in compliance with the Mineral Extraction Ordinance and with the conditions of SUP-03-91 and SUPT-91-0412. *Exhibit 1, Staff Report, page 4; Testimony of Tony Kantas.*
13. Construction on the realigned road is almost complete and the berms have been built on both sides of the newly aligned Reservation Road. *Exhibit 1, Staff Report, page 4; Testimony of Tony Kantas.*
14. Thurston County Development Services received two comment letters (*Exhibits 3 and 4*) from neighboring property owners in response to the Notice of Application for this project. Both letters address concerns with maintaining regulatory controls over the approximately ten acres that were transferred from Phase II (the subject property) to Phase I (the vested portion) of the Holroyd Mining operation. However this transfer was approved by the Hearing Examiner in 2001 in SUPT-01-0049 and is not subject to review at this time. (*Exhibits 3 and 4*)
15. The transferred property (now part of Phase I, the vested mine) is not subject to current regulatory controls. However, the Applicant has created a 50-foot wide, ten-foot high berm along the north side of the new Reservation Road to protect nearby land owners from visual or noise disturbance from mining activities. The berm will be landscaped prior to the reopening of Reservation Road and will be an adequate buffer. *Exhibit 3; Exhibit 4; Exhibit 1, Staff Report, page 4; Exhibit 1, Attachment d, Site Plans Illustrating the Required Buffers; Exhibit 2, Thurston County Public Health and Social Services Department comment letter, dated October 31, 2003; Exhibit 6, Hearing Examiner Findings, Conclusions, and Decision, SUPT-01-0049, dated August 24, 2001.*
16. Written notice of the public hearing was sent to all property owners within 2,600 feet of the site and notice was published in The Olympian on October 24, 2003, at least ten days prior to the hearing. Notice was posted on October 24, 2003. *Exhibit 1, Staff Report, page 3; Exhibit 1, Attachment a.*

## CONCLUSIONS

### Jurisdiction

The Hearings Examiner has jurisdiction to hear and decide applications for Special Use Permits pursuant to Chapter 36.70 of the Revised Code of Washington and Chapter 20.54 of the Thurston County Code. Chapter 36.70 RCW authorizes the Hearings Examiner to hear and decide cases in the manner determined by County ordinances and consistent with state law. The Thurston County Board of Commissioners requires the Hearings Examiner to conduct a public hearing and render a decision based on the record within ten (10) working days of the close of the hearing. The decision must be consistent with the general and specific criteria for review set forth in Chapter 20.54 of the Thurston County Code. Authority to approve permits of this type is granted to the Hearings Examiner under TCC 14.32.087.

### General Review Standards for Special Use Permits

The Hearings Examiner may approve an application for a Special Use Permit only if the following standards set forth in Section 20.54 of the Thurston County Code are met:

Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan and all applicable federal, state, regional, and Thurston County laws or plans.

Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and sub-area plans. Open space, lot, setback, and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in the chapter.

Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:

- a. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities or other matters affecting the public health safety and welfare. However if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though the adverse effects may occur.
- b. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities and utilities existing or planned to serve the area.

## Applicable Sections of the Thurston County Land Use Regulatory Codes

- a. Thurston County Comprehensive Plan  
Chapter Three—Natural Resource Lands
- b. Thurston County Zoning Ordinance  
Chapter 20.09A Rural Residential Resource-1 Dwelling Unit per 5 Acres  
Chapter 20.45 Landscaping and Screening.  
Chapter 20.54 Special Uses
- c. Other regulations  
Chapter 17.20 Mineral Extraction Code

## **CONCLUSIONS BASED ON FINDINGS**

1. Nielson Pacific, Ltd. (Applicant) seeks five-year review of its Special Use Permits, SUP-3-91 and SUP 97-0412, both amended by SUP 01-0049. The review is to determine whether Applicant remains in compliance with conditions of approval for the SUPs, and, to determine whether the conditions are adequate to address the impacts of the mining operation. *Finding of Fact No. 1.*
2. The current mining operation at Reservation Road remains consistent with the Thurston County Comprehensive Plan and all applicable federal, state, regional, and Thurston County laws and regulations. *Findings of Fact Nos. 1-15.*
3. The use of the site for mining activities has been reviewed and is an appropriate land use. The Special Use Permits were issued after thorough review of the entire mining operation. *Findings of Fact Nos. 1, 3, 4, & 8-12.*
4. The Thurston County Comprehensive Plan supports mineral extraction activities that incorporate restoration activities when the mining activities are discontinued. The Plan also requires that mining activities do not create adverse impacts on surrounding property owners or nearby land uses, or pose a hazard to the environment. The proposal, as conditioned, should not conflict with any of the Mineral Resource provisions of the Thurston County Comprehensive Plan. *Findings of Fact Nos. 1, & 3-14.*
5. The proposed use, as conditioned, will not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities or other matters affecting the public health safety and welfare. *Findings of Fact Nos. 1, 3, 5, 7, & 9-14.*
6. The subject proposal, as conditioned under SUP-03-91, SUPT-97-0412, and SUPT-01-0049 will not impose any burdens on any public facilities or services in the area. *Findings of Fact Nos. 1, 9, & 12.*

7. Chapter 20.45 of the Thurston County Code establishes minimum requirements for landscaping and screening when needed between incompatible land uses. The landscaping is a safeguard for privacy and to protect the aesthetic assets of the community. Section 20.45.040(1) requires that all commercial uses must have a minimum five-foot landscaped buffer along all public right-of-way or adjacent residential uses. Applicant's proposal to construct a vegetated berm along the realigned Reservation Road would mitigate visual impacts. *Findings of Fact Nos. 7, 12, & 14.*
8. Surface mining and mineral extractions are subject to the provisions of Chapter 17.20 TCC of the Thurston County Mineral Extraction Code. Phase II of Holroyd Mine has been reviewed pursuant to, and its operations are found to be consistent with, the provisions of TCC 17.20. Phase I of Holroyd Gravel Mine is considered a vested mine and is not regulated by TCC 17.20. *Findings of Fact Nos. 1-6, 9, & 12.*
9. Because Phase I is vested there are no restrictions regarding setbacks or buffers along the north side of Reservation Road. However, the Applicant has constructed a 50-foot wide by 10-foot tall landscaped berm along the north side of Reservation (Phase I) to mitigate any impacts of the transfer of the ten (10) acres from Phase II to Phase I. *Findings of Fact Nos. 1, 2, 6, 7, 12 – 14.*
10. Although TCC 17.20.230 provides that no extraction shall be conducted closer than one hundred feet to the boundary of any district or property boundary, the approval authority may reduce the setback if the property is designated resource lands of long-term significance. The subject property was designated resource lands of long-term significance by SUP-01-0049. The proposed 50-foot wide by 10-foot tall landscaped berm on both the north and south sides of Reservation Road will satisfy the intent of the 100-foot setback. The portion of Condition Number 6 of the original SUP, SUP –03-91, that specifically prohibits mining activity within the 100-foot setback is rescinded. *Finding of Fact No. 8.*

### **DECISION**

Based upon the preceding Findings of Fact and Conclusions, upon this five-year review, special use permits SUP-3-91 and SUP 97-0412, as amended by SUP-01-0049, are **GRANTED**, subject to the following conditions:

- A. All mining activity must continue in compliance with the conditions set forth in SUP-3-91, SUP 97-0412, and SUPT-01-0049. However, the requirement of a 100-foot buffer along Reservation Road is amended such that it is satisfied by the 50-foot wide, 10-foot high vegetated berm constructed on the north and south sides of the newly aligned Reservation Road.
- B. The 50-foot wide, 10-foot high berm shall completely constructed on both sides of the realigned Reservation Road prior to the opening of the road. The berm shall be



landscaped with sight-obscuring native vegetation by the next planting season after the opening of the road.

- C. Prior to issuance of any building permit, the Applicant shall submit a landscape plan for County approval that clearly demonstrates a visual buffer from the realigned reservation road. The size and spacing of plant material and landscape features shall be selected and maintained so that the entire landscaped area is covered within three (3) years.
- D. No gravel, trees or ground cover shall be removed within the 100-foot setback buffer area of Phase II, or within the 50-foot buffer on both sides on the newly aligned Reservation Road.
- E. With the exception of the access point, all trees and shrubs that are removed along Old Pacific Highway during or as part of the Reservation Road construction must be replaced. Replacement shall occur no later than the next planting season and the plantings must be sight-obscuring vegetation.
- F. The operation of the facilities on the site shall comply with Thurston County Mineral Extraction Ordinance, Chapter 17.20.
- G. Any future increase in activities on the subject property shall be reviewed with respect to all applicable requirements of the Thurston County Mineral Extraction Ordinance.
- H. Any future mining into the ground water table will require a hydrogeologic report and ground water monitoring plan be developed for this site.
- I. Any future intensification of mining activities (e.g.: crushing, washing, batch plants, etc.) will require the Applicant to submit a detailed noise study.
- J. The Applicant shall apply for a building permit for the relocation of the conveyor belt over Reservation Road.

DATED this 25<sup>TH</sup> day of November, 2003.

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James M. Driscoll  
Hearings Examiner for Thurston County

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