

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. SUPT 000337
	)	
<b>O'Neill &amp; Sons Gravel Mine</b>	)	<b>FINDINGS, CONCLUSIONS</b>
	)	<b>AND DECISION</b>
For Approval of a Special Use Permit.	)	
_____	)	

**SUMMARY OF DECISION**

A request for a Special Use Permit to expand an existing gravel mine by 15 acres for a total permitted area of 25 acres is **APPROVED**, subject to conditions.

**SUMMARY OF RECORD**

**Request**

Daniel O'Neill (Applicant) requests approval of a Special Use Permit to expand an existing 10 acre soil excavation/mining project (Phase 1) to include an additional 15 acres (Phase 2) for a total permitted area of 25 acres. The operation is located north of 103<sup>rd</sup> Avenue Southeast and west of the Chehalis Western Trail, Thurston County, Washington.

**Hearing Date**

An open record hearing on the request was held before the Hearing Examiner of Thurston County on August 21, 2000.

**Testimony**

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

Tony Kantas, Development Services

Cindy Wilson, Development Services

John Ward, Environmental Health

Alexander Mackie, Applicant Representative and also testified from personal knowledge of the property and the application.

Kathy Williams

## **Exhibits**

At the hearing the following exhibits were admitted:

### **EXHIBIT 1    Development Services Department Staff Report**

- Attachment a    Notice of Public Hearing
- Attachment b    Special Use Permit Application
- Attachment c    Site Plans Illustrating Topography, Stages of Mining, Final Reclamation Plan, and Reclamation Cross Sections
- Attachment d    Aerial Photo
- Attachment e    Mitigated Determination of NonSignificance, Issued July 18, 2000
- Attachment f    Hearing Examiner Findings, Conclusions, and Decision of SUPT-97-1791 dated January 28, 1998
- Attachment g    April 19, 2000 Memorandum from Roads and Transportation Services
- Attachment h    July 26, 2000 Memorandum from Roads and Transportation Services
- Attachment i    July 17, 2000 Letter from the Public Health and Social Services Department

### **EXHIBIT 2    August 1, 2000 Letter from Kari Rokstad, Department of Ecology**

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

## **FINDINGS**

1. The Applicant requests approval of a Special Use Permit to expand an existing 10 acre soil excavation/mining project (Phase 1) to include an additional 15 acres (Phase 2) for a total permitted area of 25 acres. The operation is located north of 103<sup>rd</sup> Avenue Southeast and west of the Chehalis Western Trail, Thurston County, Washington.<sup>1</sup> *Exhibit 1 & Testimony of Tony Kantas.*

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<sup>1</sup> The property is described in part as a portion of Sections 20 & 21, Township 17 North, Range 1 West, W.M.; known as Tax Parcel Nos. 11721320100 (existing pit) and 11720410000 (proposed expansion area).

2. The area surrounding the site is zoned Rural Residential Resource, One Dwelling Unit Per Five Acres (RRR 1/5). The surrounding land use consists of forest land to the north and west; scattered low density single-family residences directly to the south along 103<sup>rd</sup> Avenue; and County Parks property (Chehalis Western Trail) to the east. *Exhibit 1, Exhibit 1-Attachment c & d.* The nearest single-family home is 800 feet from the site and the County finds that the proposed expansion would continue to provide adequate setbacks. *Testimony of Tony Kantas.*
3. The subject property is zoned RRR 1/5. *Exhibit 1.* Mineral extraction activities are permitted in an RRR 1/5 zone after Hearing Examiner approval of a Special use Permit, provided the Washington State Department of Natural Resources approves a reclamation plan for the site (TCC 20.54 Table 1, TCC 17.20.140). The Applicant's Representative testified that the County had designated the site as a Mineral Resource area. *Testimony of Alexander Mackie.*
4. The Applicant constructed a dirt berm between the eastern portion of the property and the Chehalis Western Trail during Phase 1 of the project. The Applicant would utilize the berm for Phase 2 to maintain a sight barrier between the trail and the mining operation. *Exhibit 1 & Testimony of Tony Kantas.*
5. The proposed method of mining and excavation would be similar to the method used for the initial 10 acres. The mining involves removing soils and rock from a hill, predominately in the north and eastern portions of the 15 acre site. The Applicant would not wash or crush on the expansion area. *Exhibit 1 & Testimony of Alexander Mackie.*
6. The Applicant is requesting an increase to 100 truck hauling round-trips per week to help meet demand during peak seasons. This is an increase from the 50 truck trips per week currently allowed. The Applicant is willing to ensure that an average of 50 truck trips per week, per year would remain. *Testimony of Alexander Mackie.*
7. Pursuant to the State Environmental Policy Act (SEPA), Thurston County was designated as the lead agency for review of environmental impacts that might be caused by the proposal. The County issued a Mitigated Determination of NonSignificance (MDNS) on July 18, 2000, following a review of the environmental checklist and other pertinent documents. Conditions of the MDNS establish requirements for forestry activity, erosion control, stormwater requirements, critical areas protection, reclamation requirements, and noise standards. During the environmental review process it was determined that Oregon white oak trees, which are subject to protection under the Thurston County Critical Areas Ordinance, were found in sparse numbers on the property. *Exhibit 1-Attachment e & Testimony of Cindy Wilson.*
8. The Applicant testified that expansion of the mining site would occur in one or two acre phases and that white oak trees would be identified during the time of expansion by phases. *Representations of Alexander Mackie.* If the Applicant proposes to disturb the Oregon white

oak trees, a Habitat Management Plan would be prepared in compliance with the MDNS Conditions. *Exhibit I-Attachment e.*

9. Kathy Williams lives adjacent to the mine and testified that 103<sup>rd</sup> street had deteriorated considerably in the last few years. She also testified that her well is 42 feet deep and inquired if the proposed expansion would have an impact on ground water quality. *Testimony of Kathy Williams.* The County testified that the proposed mining activity represents a low risk to surrounding wells because mining would not occur more than 15 feet below grade. *Testimony of John Ward.*
10. At the hearing, the County recommended that the Hearing Examiner approve the special use permit, subject to conditions. *Testimony of Tony Kantas.* The Applicant agreed that the conditions recommended by the County would mitigate any potential impact of the development. *Representations of Alexander Mackie.* No one presented testimony in opposition to the proposed expansion; although Ms. Williams did present concerns about the condition of the access road.
11. 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 August 11, 2000, at least ten days prior to the hearing. Notice was posted on August 11, 2000. *Exhibit I-Attachment a.*

## **CONCLUSIONS**

### Jurisdiction

The Hearing Examiner is granted the authority to hear and decide this application 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 Hearing 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 Hearing 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.

### Criteria for Review

This Special Use Permit must be consistent with the Thurston County Mineral Extraction Code (TCC 17.20) and the following Special Use criteria (TCC 20.54.040):

- A. 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.
- B. The proposed use shall comply with the general purpose 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.

- C. 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:

1. 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 said adverse effects may occur.

2. Services

The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities existing or planned to serve the area.

Conclusions Based on Findings

1. **As conditioned, the proposed use complies with the Thurston County Comprehensive Plan and all other applicable laws.** The Comprehensive Plan supports mineral extraction that incorporates restoration activities, that does not take prime farmland out of production, does not create adverse impacts on surrounding property owners, or pose a hazard to the environment (Comprehensive Plan Chapter 3, IV.). The proposed expansion in this area is consistent with the Comprehensive Plan policies. *Findings of Fact 2, 3, & 4.* Conditions of approval are needed to help protect Oregon white oak trees that are found on-site. *Findings of Fact 7 & 8.*
2. **As conditioned, the proposal will comply with the purpose and intent of the Zoning Code.** The 15 acre expansion of mining and soil excavation is consistent with the purpose of continuing to make economic use of designated natural resource areas. With conditions of approval, all zoning requirements - including setbacks, landscaping and screening - will be met. *Findings of Fact 2, 3, & 4.*
3. **As conditioned, the special use is appropriate in the location for which it is proposed.** The nearest residence is 800 feet from the proposed mining activity and all residences are well screened by existing vegetation. *Findings of Fact 2.* The Chehalis Trail to the east is also screened by an existing dirt berm. *Findings of Fact 4.* The Applicant is requesting 100 truck trips in a six day peak work week. *Findings of Fact 1 & 6.* To help mitigate the impact of increased truck traffic, and address public concern, the Applicant should be required to make improvements to the section of 103<sup>rd</sup> Avenue that borders the subject property. Conditions of approval are necessary to help ensure these improvements are made in a timely fashion. *Findings of Fact 9.*

## **DECISION**

Based upon the preceding Findings and Conclusions, the request for a Special Use Permit to expand an existing gravel mine by 15 acres for a total permitted area of 25 acres is **APPROVED**, subject to the following conditions:

- A. O'Neill & Sons Gravel Mine must continue compliance with the conditions established through SUP-6-90 and SUPT-97-1791.
- B. All requirements of the Thurston County Environmental Health Department comment letter (Attachment i) and the Thurston County Roads and Transportation Services memorandum (Attachment h) shall be met prior to any mining activity occurring within the expansion area.
- C. The Applicant shall comply with all conditions of the Mitigated Determination of NonSignificance dated July 18, 2000.
- D. No gravel, trees or ground cover shall be removed within the 100-foot setback buffer area from all property lines.
- E. The operation of the facilities on the site shall comply with the Thurston County Mineral Extraction Code Chapter 17.20.
- F. Access to the site shall be limited to 103<sup>rd</sup> Avenue Southeast via the existing asphalt road.
- G. Truck trips shall be limited to a yearly average of 50 truck trips per week. A maximum of 100 truck trips in a six day work week during peak operations is permitted.
- H. Roads and Transportation Services shall determine what improvements are needed to 103<sup>rd</sup> Avenue where it is used to access the subject 10 acre and the 15 acre parcels. The Applicant shall pay for all improvements on 103<sup>rd</sup> Avenue that the Roads and Transportation Services department deems are needed to reduce traffic noise and dust or to improve traffic safety.
- I. Hours of operation shall be limited to 7:00 a.m. to 5:00 p.m., Monday – Friday and 9:00 a.m. to 5:00 p.m. on Saturday.
- J. The Special Use Permit shall be reviewed by the Hearing Examiner each five years after the effective date of the permit to determine whether the conditions of approval have been complied with or should be amended. The Applicant is responsible to ensure that such review has been completed within the five year time period.
- K. No additional lighting is permitted on-site.
- L. All operations must be operated in conformance with the Olympic Air Pollution Authority regulations.

- M. No additional signage is permitted along 103<sup>rd</sup> Avenue Southeast.
- N. The Applicant shall submit a copy of the Washington State Department of Natural Resources approved reclamation plan to Thurston County Development Services prior to any mining activity within the expansion area.
- O. The floor of the excavation area shall be designed and maintained in such a manner that stormwater drainage will flow to the sedimentation pond and will be retained on-site.
- P. For protection of surface and ground water, all turbid water and all stormwater shall be retained within the sedimentation pond shown on the site plan.
- Q. For the protection of surface and ground water, any future composting operation shall be covered and run-off generated shall be contained on-site.
- R. Noise levels shall comply with standards set forth in WAC 173-60-040.
- S. All equipment used on the site shall be equipped with mufflers and be properly maintained to limit noise.
- T. The operation of the facilities on the site shall be consistent with the approved site plan.
- U. There shall be no crushing or washing of mined material on the 15 acre expansion site.

Decided this 31<sup>st</sup> day of August 2000.

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Theodore Paul Hunter  
Hearing Examiner for Thurston County

*Property owners affected by this decision may request a change in valuation for property tax purposes from the Thurston County Assessor. TCC 20.60.020(3)(j)*

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