

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	No. SUPT 010049
)	
Nielsen Pacific, Ltd.)	FINDINGS, CONCLUSIONS
)	AND DECISION
For Approval of a Special Use Permit.)	
_____)	

SUMMARY OF DECISION

Applicant's request for approval to amend two Special Use Permits, SUP-3-91 and SUP 97-0412, by transferring approximately ten (10) acres from the approved Phase II mining plan (located south of Reservation Road) to Phase I, a vested gravel mine located north of Reservation Road, is **GRANTED with conditions**. Applicant's request to reduce the required 100-foot setback along the south side of Reservation Road, mitigated by construction of a 50-foot wide by 10-foot tall landscaped berm along both sides of the road, is **GRANTED with conditions**.

SUMMARY OF RECORD

Request:

Nielson Pacific, Ltd. (Applicant) proposes to amend Special Use Permits, SUP-3-91 and SUP 97-0412, by transferring approximately ten (10) acres from the approved Phase II mining plan (located south of Reservation Road) to Phase I, a vested gravel mine located north of Reservation Road. The amendment is in conjunction with the Thurston County Roads and Transportation Services Department's plan to realign Reservation Road that will include removal of approximately ten (10) acres from the approved Phase II mining plan located south of Reservation Road. The proposal also involves construction of a 100-foot wide and ten-foot high berm on both sides of the realigned Reservation Road to screen the road from the mine. The berm is proposed in lieu of maintaining a 100-foot setback.

Hearing Date:

An open record public hearing on the request was held before the Hearing Examiner of Thurston County on July 16, 2001.

Testimony:

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

Tony Kantas, Thurston County Development Services
Mike Kain, Thurston County Development Services
Sandy Mackie, Representative for Applicant
Carol Serdar

Exhibits:

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

EXHIBIT 1	Development Services Department Staff Report
Attachment a	Notice of Public Hearing
Attachment b	Special Use Permit Application
Attachment c	Site Plans Illustrating Road Realignment, Mining Phases, and Berm Cross-Section
Attachment d	Aerial Photo
Attachment e	Vicinity Map
Attachment f	Mitigated Determination of NonSignificance, Issued June 5, 2001
Attachment g	June 27, 2001 Memorandum from Roads and Transportation Services
Attachment h	February 7, 2001 Letter from the Public Health and Social Services Department
Attachment i	February 15, 2001 Comment Letter from Marshall Eberling
Attachment j	Hearing Examiner Findings, Conclusions, and Decision of SUPT-97-0412 dated February 3, 1998
Attachment k	Hearing Examiner Decision on Reconsideration, SUPT-97-0412 dated March 12, 1998
Attachment l	Hearing Examiner Findings, Conclusions, and Decision of SUP-03-91 dated April 15, 1992

EXHIBIT 2: Attachment c of Development Services Department Report—Site Plan Illustrating Road Realignment, Mining Phases, and Berm Cross-Section.

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

FINDINGS OF FACT

1. Nielson Pacific, Ltd. (Applicant) proposes to amend Special Use Permits, SUP-3-91 and SUP 97-0412, by transferring approximately ten (10) acres from the approved Phase II mining plan (located south of Reservation Road) to Phase I, a vested gravel mine located north of Reservation Road. The amendment is in conjunction with the Thurston County Roads and Transportation Services Department's plan to realign Reservation Road that will include removal of approximately ten (10) acres from the approved Phase II mining plan located south of Reservation Road. The proposal also involves construction of a 100-foot wide and ten-foot high berm on both sides of the realigned Reservation Road to screen the road from the mine. The berm is proposed in lieu of maintaining a 100-foot setback. *Exhibit 1, Staff Report, pages 1 and 2; and Attachment b, Special Use Permit Application.*
2. Condition Number 5 of SUP-03-91 (Phase II) required the Applicant to maintain a 100-foot vegetation buffer beginning at the edges of the right-of-way of Old Pacific Highway and the south side of Reservation Road. There was no setback requirement on the northern side (Phase I) of Reservation Road. The County now desires to realign Reservation Road in part of the buffer. *Exhibit 1, Staff Report, page 2; Attachment j, Hearing Examiner Findings, Conclusions, and Decision of SUPT-97-0412 dated February 3, 1998; Attachment k, Hearing Examiner Decision on Reconsideration, SUPT-97-0412 dated March 12, 1990; and Attachment l, Examiner Findings, Conclusions, and Decision of SUP-03-91.*
3. The realigned Reservation Road will encroach about fifty percent of the Phase II 100-foot buffer. As an alternative for mitigation of mining activity, the Applicant proposes to construct a 50-foot wide by ten-foot high vegetated berm on both sides of the realigned Reservation Road. The project will retain the 100-foot buffer along Old Pacific Highway except where the County will relocate the Reservation Road entrance onto Old Pacific Highway. All other boundaries of Phase II will maintain the 100-foot buffers required by all applications. The proposal also includes construction of a 50-foot wide by ten-foot high berms on both sides of the realigned Reservation Road to screen the road from the mine, rather than maintaining a 100-foot setback. *Exhibit 1, Staff Report, page 2; Attachment b, Special Use Permit Application; Attachment c, Site Plans Illustrating Road Realignment, Mining Phases, and Berm Cross-Section; Attachment d, Aerial Photo; Attachment e, Vicinity Map; Attachment g, June 27, 2001 Memorandum from Roads and Transportation Services; and Exhibit 2, Attachment c*

of Development Services Department Report—Site Plan Illustrating Road Realignment, Mining Phases, and Berm Cross-Section.

4. The transfer of approximately ten (10) acres from south of Reservation Road, the approved Phase II mining plan to Phase I, along with the County Roads and Transportation Services Department's plan to realign Reservation Road, will remove the ten (10) acres from the approved Phase II mining plan. However, much of this land will be used for Reservation Road improvements that will include greater lane width, improved roadway curves and load carrying capacity for Reservation Road. Thurston County anticipates road construction to begin in the summer of 2001. The improvements to Reservation Road will provide a benefit to the Applicant. *Exhibit 1, Staff Report, page 2; Attachment b, Special Use Permit Application; Attachment c, Site Plans Illustrating Road Realignment, Mining Phases, and Berm Cross-Section; Attachment d, Aerial Photo; Attachment e, Vicinity Map; Attachment g, June 27, 2001 Memorandum from Roads and Transportation Services; Exhibit 2, Attachment c of Development Services Department Report—Site Plan Illustrating Road Realignment, Mining Phases, and Berm Cross-Section, and Testimony of Mr. Kantas.*
5. The subject property is southeast of Old Pacific Highway Southeast and north and south of Reservation Road Southeast.¹ The entire area of the gravel operation parcel is approximately 140 acres. *Exhibit 1, Staff Report, page 1; Attachment c, Site Plans Illustrating Road Realignment, Mining Phases, and Berm Cross-Section; Attachment d, Aerial Photo; Attachment e, Vicinity Map; Attachment g, June 27, 2001 Memorandum from Roads and Transportation Services; and Exhibit 2, Attachment c of Development Services Department Report—Site Plan Illustrating Road Realignment, Mining Phases, and Berm Cross-Section.*
6. 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 RR 1/5 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; Attachment b, Special Use Permit Application; Attachment c, Site Plans Illustrating Road Realignment, Mining Phases, and Berm Cross-Section; Attachment d, Aerial Photo; Attachment e, Vicinity Map; Attachment g, June 27, 2001 Memorandum from Roads and Transportation Services; and Exhibit 2, Attachment c of Development Services Department Report—Site Plan Illustrating Road Realignment, Mining Phases, and Berm Cross-Section; Attachment j; and Testimony of Mr. Kantas.*

¹ A portion of Section 17, Township 17, 18 North, Range 1 East, W.M.; also known as Tax Parcel Numbers 09640009000, 09640010000, 0964001100, 21817330000, and 21820220000.

7. The Holroyd Gravel Mine (Phase I) is the oldest gravel mine in the State of Washington and predates all County ordinances that regulate mining activity. Phase I is considered a vested mine and is not subject to current County Standards, including setback and buffer requirements. *Exhibit 1, Staff Report, page 2; Attachment b, Special Use Permit Application; Attachment j, Hearing Examiner Findings, Conclusions, and Decision of SUPT-97-0412 dated February 3, 1998; Attachment k, Hearing Examiner Decision on Reconsideration, SUPT-97-0412 dated March 12, 1990; Attachment l Examiner Findings, Conclusions, and Decision of SUP-03-91; and Testimony of Mr. Kantas.*
8. Phase II of the mine was approved with a Special Use Permit (SUP-03-91) on April 15, 1992. On February 3, 1998, approval of the five-year review (SUPT-97-0412) of Phase II of the mine was issued after a showing of compliance with the Mineral Extraction Ordinance. *Exhibit 1, Staff Report, pages 2 and 4; Attachment j, Hearing Examiner Findings, Conclusions, and Decision of SUPT-97-0412 dated February 3, 1998; Attachment k, Hearing Examiner Decision on Reconsideration, SUPT-97-0412 dated March 12, 1990; and Attachment l Examiner Findings, Conclusions, and Decision of SUP-03-91.*
9. 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 (Hearing Examiner) may reduce the setback if the property is designated resource lands of long-term significance. The subject property is so designated. The proposed 100-foot wide by 10-foot high landscaped berm will satisfy the intent of the 100-foot setback. The proposed amendment complies with all other applicable provisions of TCC 17.20. *Exhibit 1, Staff Report, page 4.*
10. On June 2, 1999, the Applicant received a building permit to construct a temporary 30-foot high conveyor over Reservation Road. The existing conveyor, located within the area of Reservation Road that will be realigned, must be moved to cross the new road location. The conveyor, used to transport gravel from Phase II to the crushers and screens in Phase I, will be used until the mining floor on both sides is low enough to use a culvert or tunnel under the road. *Exhibit 1, Staff Report, page 5.*
11. The conveyor is considered an accessory use to the gravel mine and was included in the 1992 and 1998 SUPs approvals. However, a building permit is required for the rebuilt conveyor. *Exhibit 1, Staff Report, page 5.*
12. The berms on-site will also provide reclamation material. The project site has sufficient material stockpiled to complete final reclamation. The proposed berm is adequate to mitigate any noise and visual impacts of the proposal. *Exhibit 1, Staff Report, page 5; Attachment b, Special Use Permit Application; Attachment c, Site Plans Illustrating Road Realignment, Mining Phases, and Berm Cross-Section; Attachment d, Aerial Photo; Attachment j, Hearing Examiner Findings, Conclusions,*

and Decision of SUPT-97-0412 dated February 3, 1998, page 4; Attachment k, Hearing Examiner Decision on Reconsideration, SUPT-97-0412 dated March 12, 1990; Attachment l Examiner Findings, Conclusions, and Decision of SUP-03-91.

13. Pursuant to the State Environmental Policy Act (SEPA), Thurston County was designated as the agency for identification of environmental impacts resulting from the project. A mitigated Determination of NonSignificance (MDNS) was issued on June 5, 2001 (*Attachment f*).
14. 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, which includes conditions for erosion control, stormwater requirements, critical areas protection, and reclamation requirements. The site is also located within a designated Mineral Resource Area. *Exhibit 1, Staff Report, page 5; Attachment f, Mitigated Determination of NonSignificance, Issued June 5, 2001; Attachment h, February 7, 2001 Letter from the Public Health and Social Services Department; and Attachment j, pages 2 and 3; and Testimony of Mr. Kantas.*
15. Thurston County Development Services received one comment letter (*Attachment I*) from a neighboring property owner in response to the Notice of Application for this project. The letter includes concerns with existing gravel mine operation and traffic associated with the mine. However, the proposed amendment will not generate additional traffic above what is already generated by the existing permitted mining site. The concerns are addressed. Additionally, the Reservation Road realignment improvements will improve the safety of the road. *Exhibit 1, Staff Report, page 7, Attachment f, MDNS, Issued June 5, 2001; Attachment g, June 27, 2001 Memorandum from Roads and Transportation Services; Attachment h, February 7, 2001 Letter from the Public Health and Social Services Department; and Attachment I, February 15, 2001 Comment Letter from Marshall Eberling.*
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 July 6, 2001, at least ten (10) days prior to the hearing. Notice was posted on July 6, 2001. *Exhibit 1, Staff Report, page 3; and Attachment a, Notice of Public Hearing.*

CONCLUSIONS

Jurisdiction

The Hearing 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 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. 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 Hearing Examiner under TCC 14.32.087.

General Review Standards for Special Use Permits

The Hearing 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:

1. 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.
2. 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.
3. 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) proposes to amend Special Use Permits, SUP-3-91 and SUP 97-0412, by transferring approximately ten (10) acres from the approved Phase II mining plan (located south of Reservation Road) to Phase I, a vested gravel mine located north of Reservation Road. The amendment is in conjunction with the Thurston County Roads and Transportation Services Department's plan to realign Reservation Road that will include removal of approximately ten (10) acres from the approved Phase II mining plan located south of Reservation Road. The proposal also involves construction of a 50-foot wide and ten-foot high berm on both sides of the realigned Reservation Road to screen the road from the mine. The berm is proposed in lieu of maintaining a 100-foot setback. *Findings of Fact Nos. 1, 4, 5, and 8.*
2. The requested amendments to the special property use permits issued for mining operations at Reservation Road are 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. The amendment addresses the transfer of ten (10) acres from one phase that is regulated under current zoning regulations to another phase. *Findings of Fact Nos. 1-4 and 6-14.*
4. The proposed amendment to transfer ten (10) acres from Phase II to Phase I is consistent with the purpose of continuing to make economic use of the natural resource found on-site. The construction of a berm on both sides of Reservation Road will enhance current on-site conditions and provide aesthetic relief. All other zoning and mineral extraction code requirements, including setbacks, landscaping, and screening will be met for this development. *Findings of Fact Nos. 1-14.*
5. The Thurston County Comprehensive Plan supports mineral extraction activities that incorporate restoration activities and will be restored once the mining activities discontinue. 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, 10-15.*

6. 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. 2, 3, 4, and 6-14.*
7. The subject proposal, as conditioned under SUP-03-91 and SUPT-97-0412, will not impose any burdens on any public facilities or services in the area. *Findings of Fact Nos. 1 and 2.*
8. Chapter 20.45 of the Thurston County Code establishes minimum requirements for landscaping and screening when needed between incompatible land uses to safeguard privacy and protect the aesthetic assets of the community. Section 20.45.040(1) states 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, as conditioned, to construct a vegetated berm along the realigned Reservation Road, will mitigate visual impacts. *Findings of Fact Nos. 7-12.*
9. Surface mining and mineral extractions are subject to the provisions of Chapter 17.20 TCC of the Thurston County Mineral Extraction Code. The proposed amendments and Phase II have been reviewed pursuant to 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. 7-14.*
10. Because Phase I is vested, there are no restrictions regarding setbacks or buffers along the north side of Reservation Road. However, the Applicant has agreed to construct a 50-foot wide by 10-foot tall landscaped berm along the north side of Reservation (Phase I) as part of the transfer of the ten (10) acres from Phase II to Phase I. *Findings of Fact Nos. 6-15.*
11. 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 is designated resource lands of long-term significance. The proposed 100-foot wide by 10-foot tall landscaped berm will satisfy the intent of the 100-foot setback. Particularly, with no current setback requirement for Phase I, the proposed amendment complies with all other applicable provisions of TCC 17.20. *Findings of Fact Nos. 8, 9, and 10-14.*

DECISION

Based upon the preceding Findings of Fact and Conclusions, the request to amend Special Use Permits, SUP-3-91 and SUP 97-0412, by transferring approximately ten (10) acres from the approved Phase II mining plan located south of Reservation Road to Phase I, which is a vested gravel mine located north of Reservation Road, as well as the request to reduce the required 100-foot setback along the south side of Reservation Road, mitigated by the proposed construction of a 50-foot wide by 10-foot tall landscaped berm along both sides of the road are **GRANTED, subject to the following conditions:**

- A. All mining activity must continue to be in compliance with the requirements set forth in SUP-3-91 and SUP 97-0412. However, the requirement of a 100-foot buffer along Reservation Road is amended consistent with this amendment.
- B. A 50-foot wide by ten-foot high vegetated berm shall be constructed on both sides of the realigned Reservation Road. The berm shall be constructed prior to the opening of the new 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 ad landscape feature 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.
- 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 Code Chapter 17.20.
- G. 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 amended area.

H. The Applicant shall apply for a building permit for the relocation of the conveyor belt over Reservation Road.

DATED this 24th day of August 2001.

James M. Driscoll
Hearing Examiner for Thurston County

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