

**BEFORE THE HEARINGS EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application	)	
of Nielsen Pacific, LTD	)	No. SUPT-97-0412
for a Five-Year Review of a	)	
Special Use Permit	)	FINDINGS, CONCLUSIONS
_____	)	AND DECISION

**SUMMARY OF DECISION**

The five-year review of a Special Use Permit for a gravel mining facility is complete and the renewal of the Special Use Permit is **APPROVED**, subject to amended conditions.

**SUMMARY OF RECORD**

Request:

Nielsen Pacific, LTD (Applicant) requested a five-year review of a Special Use Permit (SUP-03-91), issued April 15, 1992, for a gravel mining operation. The five-year review was required as a condition of approval of SUP-03-91. The operation is located on Reservation Road between Old Pacific Highway and Burlington Northern Right-of-Way, Thurston County, Washington. Known as Tax Parcel Nos. 09640009000, 09640010000, 09640011000, 21817330000, and 21820220000

Hearing Date:

A hearing on the request was held before the Hearing Examiner of Thurston County on January 20, 1997.

Testimony:

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

Gary Cooper of Development Services;  
Scott Davis of Roads & Transportation Services;  
Sandie Mackie, Representative;  
Steve Nielsen, Applicant;  
Liz Meyers;  
Joanne Debes; and  
Mariana Sparkman.

Exhibits:

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

Exhibit 1:     Development Services Department Staff Report

Attachment a:     Notice of Public Hearing and Mailing List

Attachment b:     Site Plans illustrating topography, stages of mining, final  
                              reclamation plan, and reclamation cross-sections

Attachment c:     Department of Natural Resources Surface Mining Permit  
                              No. 70-012724

Attachment d: Hearing Examiner "Findings, Conclusions, and Decision," dated April 15, 1992

Attachment e: Staff Report for SUP-3-91 dated March 16, 1992.

Attachment f: Roads and Transportation Services comment Memorandum, dated November 13, 1997.

Attachment g: Public Health and Social Services Department comment letter, dated December 11, 1997.

Attachment h: Memorandum from Gary Cooper, Development Services to Art Starry, Environmental Health, et al., dated October 21, 1997.

Attachment i: Memorandum from Gary Cooper, Development Services, to Jeff Myers, Prosecuting Attorney, et al., dated October 21, 1997.

Attachment j: Memorandum from Jeff Myers, Prosecuting Attorney, to Gary Cooper, Associate Planner, dated November 6, 1997.

Exhibit 2: Comment letter submitted by Scott Davis

Exhibit 3: Comment letter submitted by MK Davis dated January 20, 1998

Exhibit 4: Letter dated October 7, 1994 written by Stephen Neilsen to the Board of County Commissioners

Exhibit 5: Memorandum dated November 15, 1994 written by the Board of County Commissioners to residents of Kulhman Road and vicinity

Exhibit 6: Ordinance No. 10798

Exhibit 7: Memorandum from Gary Cooper of Development Services

Based upon the exhibits and the testimony submitted at the public hearing, the following Findings and Conclusions are entered by the Hearing Examiner.

### FINDINGS

1. One April 15, 1992, a Special Use Permit (SUP) was issued for a gravel mining operation on the property described in the summary of record. Condition 8 of the SUP required a five (5) year review of the SUP. The Applicant submitted information for a five-year review of the SUP in order to determine compliance with the required conditions of approval has occurred and if the conditions of the SUP are adequate. *Exhibit 1, Staff Report; Exhibit 1, Attachment d; Cooper Testimony.*
2. The 140-acre subject property is zoned Rural Residential Resource--One Dwelling Unit Per Five Acres, which permits mineral extraction facilities with a Special Use Permit. Surrounding land uses include: an existing mine operation to the north; forest land, a large farming operation and a private lake and campground to the east; forest and farmland to the south; and, farmland to the west. Several farmhouses are scattered around the site. There are single family subdivisions, duplexes and a convenience store with gas pumps within one mile to the north of the site on Old Pacific Highway. *Exhibit 1, Staff Report.*
3. Although the subject property is hilly and contains some trees, it is primarily covered with scotch broom. The subject property is located within an aquifer sensitive area, approximately 4,000 feet from the City of Olympia's McAllister Springs pumping station, a source of drinking water for the entire City. The site is not within any other known environmentally sensitive areas. The site is also located within a designated Mineral Resource Area. The site was logged in the 1960s. *Exhibit 1, Staff Report.*
4. The Development Services Department reviewed the operation for compliance with all conditions. The County staff made a site inspection of the site and found that little activity has occurred on the site since the original SUP was issued. During the site inspection, the County was informed that no more than 1,000 cubic yards has been taken from the site during the past 5 years and the County testified that this estimate appears to be correct. As part of the 5 year review, the County considered the five year historical operation and the conditions of the SUP. The County concluded that the operation in its limited use had been consistent with all conditions of the SUP. *Cooper Testimony; Exhibit 1, Staff Report.*
5. A 100-foot vegetative buffer was required as a condition of the SUP. The County staff requested that a revised site plan be submitted that reflects the 100-foot buffer from the property lines. The 100-foot requirement is consistent with performance standards set forth for mineral extraction facilities. The Applicant's Representative contended that the 100 foot setback from the southern boundary is not necessary due to the location of the railroad right-of-way. *Exhibit 1, Attachment d; Cooper Testimony; Mackie Testimony; TCC Chapter 17.20.*
6. Monitoring of the noise levels was required as a condition of the SUP. If noise levels exceeded regulatory standards, the County could require mitigation, including limiting hours

of operation. Noise levels were monitored and found in compliance with applicable standards. No rock crusher exists on or is proposed for the mine site. *Exhibit 1, Attachment d; Cooper Testimony.*

7. An existing mine (old mine), owned by the Applicant, abuts the subject property to the north. The old mine is a non-conforming use as determined by the County. Several laws have been passed in recent years, many of which exempt pre-existing mines from the performance standards of the new laws. Included in the new standards created by the legislation are state noise standards, including the requirement that mines reduce their noise levels from 55 dBA to 45 dBA between the hours of 10 p.m. and 7 a.m.. However, mines that were in existence for at least 3 years before the standards' enactment are exempt and therefore the old mine is exempt from the standard. The gravel extracted from the mine being reviewed in the instant application could be crushed in a rock crusher located on the old mine site, which is operated on a 24-hour basis. The permitted noise level shall not exceed 55 dBA. *Exhibit 1, Staff Report; Cooper Testimony.*
8. Several residents in the vicinity of the site expressed concern about noise generated by the rock crushing on the old mine site. The County staff consulted the County's Prosecuting Attorney to determine to what extent the old mine can be regulated in conjunction to the new mine if they are functionally dependent. The Prosecuting Attorney determined that the old mine may not be regulated under conditions imposed on the new mine. The rights from non-conforming uses are not relinquished by the application of the five-year review permit. A permitted use adds to, rather than substitutes for, the use otherwise allowed on the property. [Summit-Waller Ass'n v. Pierce County]. The gravel crushing is allowed to continue and is not subject to the special use permit requirements, even if the gravel being crushed is extracted from the new mine. *Exhibit 1, Staff Report; Exhibit 1, Attachment i and j; Cooper Testimony.*
9. Land exchanges between the Applicant and the County will partially resolve noise problems. Reservation Road is planned to be relocated within the next two years and after relocation, the right-of-way will be vacated and land will be dedicated. The relocation will be further removed from any noise source on site and will reduce the impact. *Cooper Testimony; Davis Testimony.*

10. Changes have been made to the Thurston County Special Use Chapter for mineral extraction facilities. Ordinance Number 11398 was adopted on April 14, 1997 which added standards of review for new applications. The standards are not applicable to the instant application with the exception of 20.54.070(21)(c)(v.), which requires: A copy of the applicant's DNR operating permit application, as required by RCW 78.44.080. The Applicant has submitted the Department of Natural Resources operating permit. *Exhibit 1, Staff Report; Exhibit 1, Attachment f.*
11. A Mineral Extraction Code was adopted June 28, 1993 (Ordinance 10368, TCC Chapter 17.20). The County staff reviewed the application pursuant to the provisions in the ordinance and determined that additional conditions are not warranted to comply with the ordinance. No additional conditions are recommended regarding the Mineral Extraction Ordinance. A condition regarding submitting a revised site plan relates to a condition of the original SUP, even though it is a performance standard from the Mineral Extraction Ordinance. *Exhibit 1, Staff Report.*
12. At the public hearing, many concerns were raised about truck traffic on Old Pacific Highway. These included: Trucks coming off the subject property bring mud onto the Highway; The truck traffic has a significant impact including speed and safety issues and flying rocks; The truck traffic should be limited to certain hours of the day; and, The trucks exceed the speed limit. *Myers Testimony; Davis Testimony; Sparkman Testimony.*
13. Traffic speeds on Old Pacific Highway and Coleman Road are regulated by State law. Violations of the speed limits create a safety hazard, which is incompatible with residential uses in the vicinity. *Myers Testimony; Davis Testimony.*
14. In 1994, the Board of Commissioners requested that Coleman Road be washed and the Applicant agreed. The Applicant agreed to continue wash Coleman Road twice daily. This must remain a condition in order to mitigate the impact of loose gravel on Coleman Road. *Mackie Testimony.*
15. Written notice of the public hearing was sent to all property owners within 2,700 feet of the site on January 8, 1998 and notice was published in The Olympian on January 7, 1998, at least ten (10) days prior to the hearing. Notice was posted on January 13, 1998. *Exhibit 1, Attachment a.* Although the posting was not done at least 10 days before the hearing, adequate notice was given.

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner is granted 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.

Criteria for Review

CUP-03-91, Condition 8, states the following:

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.

Conclusions Based on Findings

1. One April 15, 1992, a Special Use Permit (SUP) was issued for a gravel mining operation on the property described in the summary of record. Condition 8 of the SUP required a five (5) year review of the SUP. The Applicant submitted information for a five-year review of the SUP in order to determine compliance with the required conditions of approval has occurred and if the conditions of the SUP are adequate. *Finding of Fact #1.*
2. The instant application is the first five-year review of the SUP for the operation. The Applicant and the County staff reviewed the operation and determined it to be in substantial compliance with all the conditions of the SUP. No changes in the gravel mining operation nor in any applicable codes and regulations were identified which warrant alteration of the existing conditions. Additional conditions are necessary to ensure consistency with regulations applicable to this facility and to mitigate impacts identified at the public hearing. *Finding of Fact # 1 - 15.*

**DECISION**

Based upon the above Findings and Conclusions, the Hearing Examiner **APPROVES** the renewal of the approved Special Use Permit for a gravel mining facility operated by Nielsen Pacific, LTD, subject to the conditions:

1. All conditions mandated in the approval of SUP-3-91 (pages 9, 10, 11 & 12 of that decision) shall continue to be conditions of approval for operation of the mining facility.
2. A revised site plan for the mine shall be submitted that reflects the 100 foot buffer from property lines that was imposed as condition #5 of SUP-3-91, and which is also contained as a performance standard in the County's Mineral Extraction Ordinance (17.20.230).
3. The operation shall be inspected annually, pursuant to TCC 17.20.160.

4. Every six months, the Applicant shall provide to Thurston County Development Services Department a record of any speeding violations. Any speeding on Pacific Highway or Coleman Road creates safety impacts and if there are cited violations by law enforcement authorities, immediate review of the SUP will occur.
5. All trucks entering and exiting the site shall have mud flaps.
6. The Applicant shall continue to wash Coleman Road twice daily.
7. The Applicant's operations shall be consistent with the requirements of RCW 46.61.655(3).

Dated this 3rd day of February 1998.

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James M. Driscoll  
Hearing Examiner for Thurston County