



COUNTY COMMISSIONERS

Cathy Wolfe
District One
Sandra Romero
District Two
Karen Valenzuela
District Three

HEARING EXAMINER

Creating Solutions for Our Future

BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Five Year Review)	NO. 2008102687
)	
NIELSEN PACIFIC LTD)	FINDINGS, CONCLUSIONS,
)	AND DECISION
Of a Special Use Permit)	
)	

SUMMARY OF DECISION

The five year review of a previously approved Special Use Permit for a 130 acre gravel mining operation at 1048 Old Pacific Highway, Thurston County, Washington, is approved.

SUMMARY OF RECORD

Request

Phase I of the Holroyd Gravel Mine is a gravel mine at 1048 Old Pacific Highway,¹ Thurston County, Washington that has been in existence for many years and predates all Thurston County Ordinances that regulate mining activity. Phase I mining activity occurred on the portion of the mine that is north of Reservation Road. Phase II of the mine, which is south of Reservation Road, was started in the 1990s and was subject to local and state regulation. A Special Use Permit (SUPT) was issued by the Hearing Examiner of the County on April 15, 1992 (SUP-03-91).² The SUPT was subject to a five year review and the Five-Year Review (SUPT-97-0412) was reviewed for consistency with the Mineral Extraction Ordinance (Chapter 17.20, adopted June 28, 1993).³ On August 24, 2001, the Hearing Examiner of Thurston County approved a Special Use Permit (SUPT 010049) that amended the two Special Use Permits, SUP-3-91 and SUPT 97-0412, by transferring approximately ten (10) acres from Phase I to Phase II and Phase II to Phase I. The instant matter is a five year review as required by SUP-03-91.

¹ A portion of Section(s) 12, 18, and 20, Township 18 North, Range 1 East, W.M.; known as Tax Parcel Number(s): 09640009000, 09640010000, 09640011000, 21817330000, and 21820220000, Thurston County, Washington.

² The original Special Use Permit (SUP-03-91) was not reviewed under the County Mineral Extraction Ordinance (Chapter 17.20, adopted June 28, 1993). However, the Five-Year Review (SUPT-97-0412) was reviewed for consistency with the Mineral Extraction Ordinance. *Exhibit I, Staff Report, pg. 1*

³ On August 24, 2001 the Hearing Examiner of Thurston County approved a Special Use Permit (SUPT 010049) that amended the Special Use Permits, SUP-3-91 and SUPT 97-0412 by transferring approximately ten (10) acres from each site to the other

Hearing Date

The Thurston County Hearing Examiner held an open record public hearing on April 20, 2009.

Testimony

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

Robert Smith, Senior Planner, Resource Stewardship Department

John Ward, Environmental Health Department

Attorney Representation:

Alexander Mackie, Perkins Coie, Attorney for Applicant

Exhibits

At the open record public hearing, the following exhibits were admitted into the record:

EXHIBIT 1 Resource Stewardship Department Report including the following attachments:

- Attachment a Notice of Public Hearing
- Attachment b Zoning/Site Map
- Attachment c Special Use Permit Application (5-year review), received 7/8/09
- Attachment d Site plans (3)
- Attachment e Washington State Department of Natural Resources Reclamation Application
- Attachment f Supplemental Information relating to the Revised Reclamation Plan
- Attachment g October 15, 2008 Comment Memorandum from the Thurston County Roads Department
- Attachment h July 29, 2008 Comment Letter from the Washington State Department of Ecology
- Attachment i September 22, 2008 Comment Letter from the Washington State Department of Ecology
- Attachment j September 18, 2008 Comment from Connie Stewart

EXHIBIT 2 Photo of Public Hearing Notice Posting

EXHIBIT 3 April 13, 2009 Comment Letter from Public Health and Social Services Department

EXHIBIT 4 April 19, 2009 Comment Letter from Darlene Correa

EXHIBIT 5 Aerial Photo of Site

EXHIBIT 6 SUP-03-91 Findings Conclusions and Decision dated April 15, 1992

EXHIBIT 7 SUPT 010049 Findings Conclusions and Decision dated August 24, 2001

EXHIBIT 8 May 11, 2009 Email from Sandy Mackie granting extension for issuance of decision to May 14, 2009

Upon consideration of the testimony and exhibits submitted, the Hearing Examiner enters the following Findings, Conclusions, and Decision:

FINDINGS

1. SUPT 3-91, issued on April 15, 1992 by the Thurston County Hearing Examiner⁴, approved Phase II of the Holroyd Gravel Mine at 1048 Old Pacific Highway, Thurston County, Washington. Condition Number 8 of the permit mandated that the Applicant submit the mining operation to a Hearing Examiner review every five years for compliance with the conditions of the permit and the mining regulations of the County. After a review the Hearing Examiner shall determine whether the conditions of the permit remain adequate to address the impacts of the mining operation. *Exhibit 1, Staff Report, pg. 2; Exhibit 6.* The current application has been submitted to comply with this requirement. *Testimony of Mr. Smith.*
2. The Holroyd Gravel Mine is the second oldest gravel mine in the State of Washington and predates all Thurston County ordinances that regulate mining activity. The mine has been divided and worked as two Phases. Phase I, north of Reservation Road, was initially mined before the County established standards for mining operations. Phase I is a vested mine that is not subject to the current County standards, including setback and buffer requirements. *Testimony of Mr. Smith; Exhibit 1, Staff Report, pg. 2.* At the time that Phase II, south of Reservation Road, was proposed as part of the gravel mine, the County had established mining operation standards (Chapter 17.20 Mineral Extraction Code). SUP 3-91 was issued pursuant to these standards. *Testimony of Mr. Smith, Testimony of Mr. Mackey; Exhibit 1, Staff Report, pgs. 2 and 3.*
3. The 130 acre site of Phase II is zoned Rural Residential--One Dwelling Unit per Five Acres (RR 1/5). Mineral extraction activities are permitted in the RRR 1/5 Zoning District subject to Hearing Examiner approval of a Special Use Permit and Washington State Department of Natural Resources approval of a reclamation plan for the site. *Exhibit 1, Staff Report, pg. 2.*
4. The terrain of the site is hilly with a limited number of trees. It is primarily covered with scotch broom exposed gravel. The site is in an aquifer sensitive area, approximately 4,000 feet from the City of Olympia's McAllister Springs pumping station. McAllister Springs is the source of drinking water for Olympia. The site is in a designated Mineral Resource Area. To the east of the subject site is forestland, a large farming operation and a private lake and campground; to the south is forest and farmland; and to the west is farmland. *Exhibit 1, Staff Report, pg. 2.*
5. The initial five year review occurred in 1997 (SUPT-97-0412). Subsequent to the initial review another SUPT was issued (SUPT 010049) that amended SUP-3-91 and SUPT 97-0412 with the approval of the transfer of approximately ten (10) acres from each side of Reservation Road to the other side. This transfer of lands from each Phase allowed for the realignment of Reservation Road by the County. *Exhibit 7; Testimony of Mr. Mackey.*

⁴ The Hearing Examiner at the time was Campbell H.D. Kintz
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Nielsen Pacific

6. The last five year review occurred in 2003. In that review (SUPT-2003100090), the Thurston County Hearing Examiner found the mining operation of Phase II was in compliance with the conditions required in SUPT 3-91. *Testimony of Mr. Smith; Testimony of Mr. Mackey.* The Phase II mining operation has been continuous since the 2003 review and remains in compliance. *Exhibit 1, Staff Report, pg. 3; Testimony of Mr. Smith.*
7. There are no proposals for expansion of the existing allowed mining depth or area, and, there are no proposals for asphalt or concrete batch plants to be placed on site. There are very few trucks used on the subject site. Most of the activity involves a conveyor system that moves gravel from the subject site to the Phase I site. The operation is limited with little or no equipment stored on the property. There are no structures on site. There is no water supply on site and domestic water will not be required until such time that the Applicant intensifies the operations onsite to with an office, shop or other structures. *Exhibit 3; Testimony of Mr. Mackey.*
8. Few hazardous materials are used or stored on site other than those used for occasional fueling of loaders, conveyors or other temporary equipment used in the mining operation. All equipment maintenance and the majority of fueling are done at the main processing facility on Phase I property. On Phase I there is an approved hazardous materials handling and spill plan for the shop and maintenance facility. There is no requirement for a hazardous materials handling and spill plan for the operations on Phase II. *Exhibit 3.*
9. Condition Number 5 of SUP-03-91 (Phase II) required 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. *Exhibit 6.* However, the realignment of Reservation Road resulted in an encroachment of approximately 50 feet into the Phase II 100-foot buffer. As part of the approved SUPT amendment (SUPT 010049) the setback was reduced and the Applicant was required to construct a ten-foot high-vegetated berm on both sides of the realigned Reservation Road. *Exhibit 7, condition 11.* The Applicant has completed all buffer, landscaping, and berm requirements adjacent to Reservation Road. *Exhibit 1, Staff Report, pg. 4.*
10. Thurston County Public Health determined that no noise studies are required for the subject site. The berms around the perimeter of the active portions of the mine mitigate noise impacts. The decibel readings at the site have been below the 55 db standard (see: WAC 173-60). *Exhibit 3, Testimony of Mr. Mackey; Testimony of Mr. Smith.*
11. The Resource Stewardship Department submitted in its report: “This application has been reviewed for, and found to be in compliance with the standards of the Mineral Extraction Ordinance and the conditions of SUP-03-91, SUPT 97-412, and SUPT 010049.” *Exhibit 1, Staff Report, pg. 4.* There have been no changes to the Thurston County Special Use Chapter for mineral extraction or the County’s Mineral Extraction Code since the last five-year review (2003100090) was approved. *Testimony of Mr. Smith; Exhibit 1, Staff Report, pg. 4.*

12. A Mitigated Determination of Non-Significance (MDNS) was issued on January 24, 1992 and became final on February 10, 1992. A MDNS was also issued on June 5, 2001 and became final on June 19, 2001 for amendments of SUP-3-91 and SUP 97-0412. A new MDNS is not required for the subject Five-Year Review. *Exhibit 1, Staff Report, pg. 3*
13. 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 Nisqually Valley News on April 10, 2009, at least ten (10) days prior to the hearing. Notice was posted on April 3, 2009. *Exhibit 1, Staff Report, pg. 3; Exhibit 1, attachment a; Exhibit 2.*
14. An e-mail was sent to the County from a part time resident of Lost Lake RV Resort. The writer (Darlene Correa) submitted that the mining operations extend from 6 am through the evening, and, that the trucks exiting the site are disruptive to the flow of traffic on the public road. *Exhibit 4.* In response the representative for the Applicant testified that the complained of activities were part of allowed Phase I operations and were not part of Phase II activities. There are no trucks leaving the Phase II sites and all hours of operation of Phase II as required by permits are adhered to. *Testimony of Mr. Mackey.*
15. The Resource Stewardship Department made the following recommendation:
Based upon the above analysis, the Development Services Department recommends **approval** of the Five-Year Review with the following conditions:
 - A. All mining activity must continue to be in compliance with the conditions established through SUP-3-91, SUP 97-0412, and SUPT 010049.
 - B. The operation of the gravel mine shall remain in compliance with the Thurston County Mineral Extraction Ordinance, Chapter 17.20.
 - C. Another Five-Year Review shall be required within five years of the date this review approval becomes final.
16. Thurston County Department of Public Health and Social Services Department recommended approval of the five-year review and also recommended that the following additional conditions be imposed on the Applicant.
 - A. Any future increase in activities on this site will be reviewed with respect to all requirements of the Thurston County Mineral Extraction Ordinance.
 - B. Any future mining into the ground water table will require a hydrogeologic report and ground water monitoring plan for this site.
 - C. Any future intensification of the site (ie: crushing, washing, batch plant, etc.) may result in the applicant being required to submit a detailed noise study.
 - D. Any future proposals to conduct maintenance and repair of vehicles or equipment on this site will require a hazardous materials handling, storage waste disposal, and spill response plan to be developed for this site.
 - E. Any future additions of buildings (ie. office, shop, etc) will require an approved public water supply and approved sewage systems.

Exhibit 3

CONCLUSIONS

Jurisdiction:

The Hearing Examiner has jurisdiction to decide the Special Use Permit amendment pursuant to TCC 2.06.010 and TCC 20.54.015, and RCW 35.63.130 and RCW 36.70.970. SUP-03-91 (condition 8) issued on April 15, 1992, requires a five-year review by the Thurston County Hearing Examiner.

Criteria for Review:

Condition 8 of SUP-03-91 reads:

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

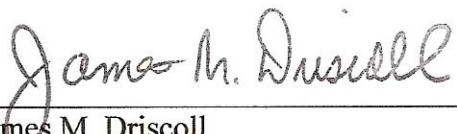
1. **“At the time of such review, the Hearing Examiner may impose additional conditions upon the operation of the use if the Hearing Examiner determines it is necessary to do so to mitigate the impact of the use.”** The only additional conditions imposed will be those recommended by Thurston County. *Finding No. 15.* The operation of Phase II is consistent with the intent of SUP-03-91 and the Thurston County Mineral Extraction Ordinance, Chapter 17.20. *Finding No. 6,*
2. **“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.”** All adverse impacts of the mining operation permitted by SUP-03-91 can adequately be mitigated by existing conditions and those imposed herein. *Findings of Fact Nos. 7, 8, 9, 10 and 15.*
3. The mining operation permitted by SUP-03-91 is in compliance with the standards of the Mineral Extraction Ordinance and the conditions of SUP-03-91, SUPT 97-412, and SUPT 010049. There have been no changes to the Thurston County Special Use Chapter for mineral extraction or the County’s Mineral Extraction Code since the last five-year review (2003100090) was approved. *Finding of Fact No. 11.*

DECISION

The five year review of the previously approved Special Use Permit for a 130 acre gravel mining operation at 1048 Old Pacific Highway, Thurston County, Washington, is approved, subject to the following additional conditions:

- A. All mining activity must continue to be operated in compliance with the conditions established through SUP-3-91, SUP 97-0412, and SUPT 010049.
- B. The operation of the gravel mine shall remain in compliance with the Thurston County Mineral Extraction Ordinance, Chapter 17.20.
- C. A Five-Year Review shall be required within five years of the date this review approval becomes final.
- D. Future increase in activities on the site will be reviewed pursuant to all requirements of the Thurston County Mineral Extraction Ordinance.
- E. Any future mining into the ground water table will require a hydrogeologic report and ground water monitoring plan for the site.
- F. Any future intensification of the site (e.g. crushing, washing, batch plant etc.) may require a detailed noise study being prepared by the Applicant. The Thurston County Environmental Health Director shall make the determination.
- G. Any future proposals to conduct maintenance and repair of vehicles or equipment on the site will require a hazardous materials handling, storage waste disposal, and spill response plan to be developed for the site.
- H. Any future additions of buildings (e.g. office, shop etc) will require an approved public water supply and approved sewage systems.

Decided this 12th day of May, 2009.


James M. Driscoll
Thurston County Hearing Examiner

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