

ORDINANCE NO. 7400

AN ORDINANCE granting, in part, the applicant's appeal from the recommendation of the Zoning and Subdivision Examiner; adopting findings and conclusions; and amending King County Resolution No. 25789, as amended, by reclassifying certain property upon the application of PALMER COKE AND COAL & PACIFIC COAST COAL CO., designated Building and Land Development Division File No. 237-82-R.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. This ordinance grants, in part, the appeal by the applicant of the recommendation of the King County zoning and subdivision examiner, as contained in the August 8, 1985, report of the zoning and subdivision examiner, filed with the clerk of the council on September 5, 1985, on the application of Palmer Coke & Coal Company and Pacific Coast Coal Company to reclassify certain property described in building and land development file no. 237-82-R.

SECTION 2. The recommendation of the zoning and subdivision examiner to reclassify a portion of the subject property from G (General) to QM (Quarrying Mining) subject to conditions, as set forth at pages 49-51 of the report of the zoning and subdivision examiner, is hereby adopted by the council of King County, with the following modifications:

Condition No. 16, as recommended by the examiner, is deleted, and the following substituted:

16. "Limited Hours" means between the hours of 7:30 a.m. and 5:30 p.m., Mondays through Fridays only, excluding legal holidays.

"Extended Hours" means between the hours of 6:00 a.m. and 10:00 p.m., Mondays through Fridays and 7:30 a.m. through 5:30 p.m. Saturdays, excluding legal holidays.

"Operation of the Mine" includes coal processing but does

1 not include the movement of coal trucks between the
2 processing plant and the public highway via the access road.
3 Operation of the mine may be conducted only during Limited
4 Hours until the entire earth noise berm on the easterly
5 portion of the site is completed. Operation of the mine
6 within 1000 feet of any portion of the earth noise berm to
7 be constructed on the northwest and southwest portions of
8 the site shall be during Limited Hours until the entire
9 noise berm is completed. Otherwise operation of the mine
10 may be conducted during Extended Hours.

11 Trucks coming from or going to the public highway shall not
12 leave or arrive on the site during morning or evening peak
13 traffic hours as those hours may be determined by the King
14 County Public Works Department, traffic engineer.

15 Condition No. 13, as recommended by the examiner, is
16 modified to read as follows:

17 13. The perimeter of the site which affects or is adjacent
18 to a public road or highway or developed residential areas
19 shall be fenced in a manner approved by the Building and
20 Land Development Division to provide site security and
21 protection of the public. Such fencing shall be designed
22 and located to best achieve, with the required landscaping,
23 additional mitigation of the visual impacts of the mining
24 operation, as well as the primary objective of site
25 security. The specific requirements for fencing, including
26 the time construction thereof is required, shall be
27 incorporated into the initial grading permit issued by the
28 Building and Land Development Division.

29 Condition No. 15, as recommended by the examiner, is
30 modified to read as follows:

31 15. Within six months after the hauling of coal from the
32 site commences, the King County Department of Public Works,
33 Division of Traffic and Planning, shall analyze the impacts

1 of coal haulage upon King County and Black Diamond Roads
2 and SR 169, and shall recommend to the Building and Land
3 Development Division the measures necessary to mitigate any
4 impacts which are then identified. Subsequently issued
5 grading permits, or renewals thereof, shall require such
6 mitigating measures as are reasonably necessary to be
7 performed by, or contributed to, by the mine operator, to
8 adequately mitigate the impacts upon traffic safety,
9 whether attributable to turning movements, prolonged
10 acceleration or deceleration, or road deterioration, which
11 are identified by the Department of Public Works. Any
12 requirement for monetary contributions which may be imposed
13 on the applicant shall be proportionate to the applicant's
14 use of said roads and shall be based upon a reasonable
15 survey of all similar truck traffic using said roads.
16 Condition No. 7, as recommended by the examiner, is
17 modified to read as follows:

18 7. The King County Surface Water Management Division shall
19 review and approve the design and implementation of surface
20 water drainage plans, and erosion and sedimentation control
21 plans and shall establish methods and frequencies for
22 monitoring stream flows. This review and approval shall
23 occur prior to the issuance of each grading permit,
24 extension or renewal thereof. Inspections and monitoring
25 of surface water drainage plans and erosion and
26 sedimentation control plans, as required by the Division,
27 shall continue for the life of the mine, including
28 reclamation.

29 There is added as Condition No. 18 the following:

30 18. All lights which are placed above ground level shall
31 be shielded on all sides so that only the site is
32 illuminated.

33 SECTION 3. The findings and conclusions made by the zoning

1 and subdivision examiner, as set forth in the examiner's
2 report at pages 11-49, are adopted as the findings and
3 conclusions of the council, with the following modifications:

4 All references made in the report of the zoning and
5 subdivision examiner to conditions of approval shall be deemed
6 to refer to and mean the conditions as adopted and modified in
7 section 2 of this ordinance.

8 Conclusion No. 27, as recommended by the examiner, is
9 modified to read:

10 27. No mining operations should be permitted other than
11 between the hours of 6:00 a.m. and 10:00 p.m. Mondays
12 through Fridays and 7:30 a.m. through 5:30 p.m. on
13 Saturdays, excluding legal holidays. Hours should be
14 further limited to 7:30 a.m. to 5:30 p.m. Mondays through
15 Fridays, excluding legal holidays, until the entire earth
16 noise berm on the easterly portion of the site is
17 completed. Operation of the mine within 1000 feet of any
18 portion of the earth noise berms to be constructed on the
19 northwest and southwest portions of the site should
20 likewise be limited until the entire noise berm is
21 completed. Trucks coming from or going to the public
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highway should not leave or arrive at the site during morning or evening peak traffic hours, as determined by the King County Public Works Department, traffic engineer.

INTRODUCED AND READ for the first time this 27th day of February, 1984.

PASSED this 12th day of November, 1985.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

[Signature]
Chairman

ATTEST:

[Signature]
Clerk of the Council

APPROVED this _____ day of _____, 19____

COUNTY EXECUTIVE'S SIGNATURE
DATED: 11/25/85

King County Executive

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King County Executive
Randy Revelle

November 27, 1985

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1985 NOV 27 PM 12:32
CLERK
KING COUNTY COUNCIL

The Honorable Gary Grant
Chairman, King County Council
C O U R T H O U S E

RE: Ordinance 7400

Dear Chairman Grant:

I am returning without my signature Ordinance 7400 approving the John Henry Mine rezone. I did not sign this Ordinance because its procedural history and substantive issues lead me to conclude I should not support the Ordinance. I did not veto this Ordinance because a veto would not likely ensure a better legislative outcome and could create a worse situation. In spite of my decision not to veto the Ordinance, I respectfully urge the County Council reconsider the Ordinance in light of the issues raised in this letter.

The Council's approval of the rezone for the John Henry Mine, eliminating certain conditions required by the Hearing Examiner, is a decision of substantial consequence for King County. Such an action should be based on a full and complete assessment of probable impacts and a practical assessment of available mitigation measures. In our judgment, Ordinance 7400 does not measure up to these standards required by law and sound government.

Specifically, we are concerned the Council's action may not have complied with the requirements of the State Environmental Policy Act (SEPA). I understand a Deputy Prosecuting Attorney suggested the Council postpone action to enable him to research and advise the Council on the SEPA procedural questions. At issue was the Hearing Examiner's March 25, 1985 decision that a Final Environmental Impact Statement (EIS) prepared by the Federal Office of Surface Mining (OSM) under the National Environmental Policy Act (NEPA) substituted for King County's need to comply with SEPA. Although we agree with the need to avoid wasteful duplication, the assumption that SEPA requirements for a detailed EIS are always encompassed within the NEPA requirements is untrue and potentially dangerous.

There is substantial similarity between the State and Federal EIS requirements. Duplication of many of the environmental and technical issues and topics is not necessary. However, the State and Federal environmental policy acts are not identical.

The reason for preparing an EIS is to inform policy makers regarding the environmental issues related to the proposed actions before them. King County cannot avoid its responsibility to allow an adequate opportunity for public discussion and review of the EIS.

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The Federal OSM permit does not decide the zoning and land use questions. Federal approval is contingent on County local land use approval. The Federal agency is not responsible for land use compatibility. Land use was not, and did not need to be, a major component of the Federal EIS. Only four paragraphs of the 130 page NEPA document specifically address land use.

The appropriate reading of RCW 43.21c.150 uses the carefully tailored adoption process set out specifically in the recent amendments to SEPA in WAC 197-11-610(3), 197-11-630, and 197-11-960. This careful and deliberate process states King County "must independently review the content of the (NEPA) document and determine that it meets (King County's) environmental review standards and needs for the proposal." Unfortunately this has not been done.

As a consequence, the public's right to review and comment on the adequacy of the environmental analysis of the revised John Henry Mine proposal was severely compromised. The Division of Building and Land Development (BALD), the lead agency for King County, indicated the environmental documentation was inadequate on a few key issues and in its view, the record was not adequate to permit proper and responsible decision in compliance with SEPA. (BALD Report to the Hearing Examiner, April 15, 1985, pages 4, 5, and 6.)

Despite the frustration and time consuming nature of previous reviews, BALD's request for the two month continuance to perfect the environmental review and to ensure SEPA compliance was reasonable and appropriate. The continuance would have been far preferable to the prospect of a long drawn out court battle on the procedural issue which will waste resources of the applicant, the neighbors, and the general public. We believe this two month continuance should be granted as part of the Council's reconsideration of Ordinance 7400.

The substantive issue involved in Ordinance 7400 is a difficult and complex one: Does a surface mine in the proposed location constitute a proper and compatible activity under King County's plans and policies? The Hearing Examiner found it was a close question, but judged that the mining operation should be permitted if the impacts could be mitigated adequately so the use will be reasonably compatible with adjacent and nearby land uses.

The John Henry property only met the final test of approval in the Hearing Examiner's judgment with the addition of seventeen conditions which, if enforceable in the real world, could reduce negative environmental impacts to an acceptable level. On appeal, however, the King County Council amended four of the Hearing Examiner's conditions and added an eighteenth one. The most important of these amendments was the elimination of the condition prohibiting mining operations in the early morning and at night. The tenuous balance crafted by the Hearing Examiner was upset by the Council's changes.

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Conditions 10 and 12 relating to noise and air pollution were the linchpins of the Hearing Examiner's intent that "there be maintained to the extent reasonably possible the relative quiet rural characteristics of the area." These conditions delegate to BALD the responsibility to ensure specific mitigation measures. It probably would have been better public policy to perform the studies to determine whether mitigation measures envisioned by the Hearing Examiner were feasible before approving the rezone.

BALD, the neighbors, and the applicant are put in an untenable position if these measures prove unworkable in practice. The applicant's attorney himself indicated his belief that the standards were "a bureaucratic nightmare waiting to occur." The pressures upon BALD and upon the Council at a later date to strip away these stringent standards will be extreme. Weakening these standards will deprive the mine's neighbors of the critical protection that was key to the Hearing Examiner's decision to approve the mine. We believe the Council should consider making these essential conditions pre-effective before the Q-M zoning is actually granted as part of reconsidering Ordinance 7400 so that false hopes and expectations will be avoided.

In summary, approval of the John Henry Mine is a significant environmental and land use decision. I respectfully return Ordinance 7400 without my signature and urge the Council to reconsider its action on this matter on both procedural and substantive grounds.

If you have any questions about this letter, please contact me at x4040 or Holly Miller at x7503.

Sincerely,



RANDY REVELLE
King County Executive

RR:SM:m2/1

cc: King County Councilmembers
 ATTN: Cheryle Broom, Program Director
 Jerry Peterson, Administrator
Executive Cabinet
Dick Chapin, Attorney
Megan Heath, Attorney