AN ORDINANCE of the City of Kent, Washington, approving application CD-SU-74-1, an application of Kent Highlands, Inc., for a Special Use Combining District for purposes of mineral extraction in an area zone R-A, Residential-Agricultural District, and imposing conditions upon said approval and upon the extraction operations.

WHEREAS, Kent Highlands, Inc., has made application to the City of Kent under application No. CD-SU-74-1 for the imposition of a Special Use Combining District in an area of the City zoned R-A, Residential-Agricultural Zoning District, an area containing 83.7 acres, more or less, and

WHEREAS, the purpose of said application is to allow Kent Highlands, Inc., to extract approximately one million cubic yards of materials from the area for the purpose of providing fill for building sites within the City of Kent, and

WHEREAS, the Kent City Council has previously determined that the interests of the citizens of the City of Kent would best be served by committing a substantial portion of that area known as the Green River Valley within the City to industrial development, and

WHEREAS, due to soil and other conditions in the area it is generally necessary to fill property prior to any substantial construction thereon, and

WHEREAS, considerable savings in time and money can be realized by property developers if there are local sources for fill material, and

WHEREAS, it has been determined that there is a substantial current and future need for fill material in the City, and

WHEREAS, application CD-SU-74-1 was heard before the Planning Commission and City Council in public hearings, and all
persons who attended said public hearings were given the opportunity to be heard, and all correspondence which was received prior to closure of the public hearings was read and considered, and

WHEREAS, the City Council has determined that it would be in the best interests of the citizens of the City of Kent to approve the application, and FURTHER that all of the conditions set forth in Section 3.20.4 of the Kent Zoning Code have been or can be satisfied by the imposition of certain conditions and controls upon the extraction operation contemplated by the application, NOW, THEREFORE

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Application CD-SU-74-1, an application by Kent Highlands, Inc. for the imposition of a Special Use Combining District for the purpose of extracting minerals from an area of the City of Kent hereinafter described, be and the same hereby is granted.

Section 2. The property upon which said District is imposed, currently zoned R-A, Residential-Agricultural Zoning District, is described as follows:

That portion of the south one-half of Section 10 and the northeast quarter of Section 15, Township 22 North, Range 4 East, W.M., King County, Washington described as follows:

Beginning at the west quarter corner of said Section 10; thence south 0°56'50" west along the west line thereof a distance of 2,645.03 feet to the southwest corner thereof; thence north 86°51'12" east a distance of 2,131.63 feet; thence north 89°44'00" east a distance of 1,050.00 feet; thence south 0°16'00" east a distance of 825.00 feet to the True Point of Beginning of the herein described tract; thence north 0°16'00" west a distance of 825.00 feet; thence south 89°44'00" west a distance of 1,050.00 feet; thence north 0°16'00" west a distance of 1,500.00 feet; thence north 89°44'00" east a distance of 1,050.00 feet; thence south 0°16'00" east a distance of 270.00 feet; thence south 77°00'00" east a distance of 1,210.00 feet, more or less, to the westerly bank of the Green River; thence southerly along said westerly bank of the Green River to a point which bears north 89°44'00" east
from the True Point of Beginning; thence south 89°44'00" west a distance of 780.00 feet, more or less, to the True Point of Beginning.

EXCEPT that portion thereof if any lying within Frager Road.

Section 3. The approval of the application and the grant of authority to Kent Highlands, Inc. to conduct mineral extraction operations on the above described property is conditioned upon the following terms and conditions:

1. Actual removal operations shall be permitted only between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday; no removal shall be permitted on Saturdays, Sundays, or National Holidays.

2. Kent Highlands, Inc. shall be responsible for keeping all public roadways utilized by vehicles removing material from the site free and clear of debris by cleaning and periodically removing any spillage as may be required by the City.

3. Removal shall commence on the westerly margin of the property and be conducted easterly through the full north-south access of the property until the removal is completed. Where unstable slope conditions occur, the operation will be under the advisement of a soils engineer.

4. All material removed from the site shall be used within the City of Kent.

5. All uncontaminated storm water shall be diverted around the stripped area of the site to natural down stream water courses, provided that no such storm waters shall be diverted into Drainage District No. Two's channel.

6. Contaminated storm waters shall be ponded so as to allow percolation and prevent discharge to the receiving surface waters of a turbidity measurement exceeding 5 j.t.u. over and above the natural condition in the receiving waters.

7. No petroleum products shall be disposed of in storm water or allowed to flow in any manner to storm water lagoons or to receiving natural flow water courses.

8. To minimize dust potential or particulate problems which could be created by natural removal and traffic flow, applicant shall pave the haul route from the area of removal over private property owned by applicant or others, and
provide a completely paved route therefrom to South 216th Street. All trucks proceeding on the public right-of-way shall proceed via South 216th Street from the private roadway to 42nd Avenue South via 42nd Avenue South to South 212th. Kent Highlands, Inc. shall provide satisfactory documentary proof to the City of its legal right to cross private property to reach the above referenced public streets.

9. Maintenance of the private paved roadway from the property to the public right-of-way shall be the responsibility of Kent Highlands, Inc. during the term of the removal.

10. Any breakdown of paving on South 216th and 42nd Avenue South or other maintenance arising as a result of such truck use shall be the responsibility of Kent Highlands, Inc. and periodic repair and maintenance shall be provided as required by the City of Kent during the period of removal. A review of the condition of such roadways utilized by truck traffic shall be done by Kent Highlands, Inc. and the City of Kent at the completion of the removal and any final repair or maintenance required shall be completed prior to the release of any bond required of Kent Highlands, Inc.

11. No removal of material shall be permitted below the final contour lines as provided and described on the application for grading permit and detailed on the plan filed entitled "Proposed Special Use Combining District - SU for Kent Highlands, Inc., Kent, Washington" prepared by Hugh G. Goldsmith, Professional Engineer and Land Surveyor, dated November 19, 1973, and revised on April 4, 1974, to change the permit and grading area and detail of weir.

12. The slopes therein established, entitled "Proposed Finished Grade Contour" shall also be established as the final slopes to remain on the site upon completion of removal.

13. All top soil removed shall be stockpiled by Kent Highlands, Inc. for a later use in rehabilitation and revegetation of the property.

14. During the initial operation and as long as possible, Kent Highlands, Inc. will maintain the natural vegetation on the peak of the knoll easterly over the remainder of the site to screen the exposed area as much as possible from public view.

15. Vegetative reclamation shall be provided by applicant concurrent with excavation leaving only sufficient space at the slope toe for
removal equipment to operate. The reseeding operation shall involve a combination of clover, grass and alder seed. Evergreen trees shall be planted on the site concurrent with revegetation. The numbers of evergreen trees to be planted and their locations on the site shall be determined by the Board of Natural Resources of the State of Washington. Prior to commencement of removal of material, applicant shall submit a restoration, vegetation and landscaping plan to the City Planning Department for approval.

16. The lowland portion of the property devoted to a settling lagoon shall be restored to permit agricultural use upon completion of the need for a settling lagoon unless prior to the expiration of the permit, other use is approved by the City, which would negate the need for restoration for agricultural use.

17. Water shall be provided at the excavation site to control dust when necessary during periods of excavation. Such water control shall be utilized on all unpaved portions of the site including roadways and excavation areas, so that dust and other particulates shall not enter the atmosphere in excess of any amounts permitted by Puget Sound Air Pollution Control Commission. In no case shall dust cause the ambient air to exceed the standard of 60 as established by such agency.

18. The term of this permit shall be for a period of five (5) years with semi-annual review by the Planning Commission. At the time of each review, the Planning Commission may impose additional conditions or modifications to the permit if prior operating conditions require said changes.

19. Kent Highlands, Inc. shall furnish to the City a performance bond in the amount of $100,000 to assure street maintenance as well as to assure performance of all other conditions of this permit, including the landscaping and revegetation of the property during the period of removal as well as upon final completion of removal of materials. In addition, Kent Highlands shall furnish to the City Engineer and maintain with the City Engineer at all times during the life of this permit, a $1,000 cash bond which shall be used as a fund to permit the City to make immediate repairs to public rights-of-way in the event applicant shall fail or refuse for any reason to initiate repairs required by the City.

20. The bonds required by this permit shall be subject to forfeiture by the City in the full amount, should applicant fail to comply with terms of this Ordinance and perform conditions established herein promptly and as herein required. FURTHER, in the event a right of forfeiture of the bonds arises because of sub-
stantial failure of performance by Kent Highlands, or in the event of substantial non-compliance with any of the terms and conditions as outlined in this Ordinance, then, upon hearing by the City Council the permit may be revoked prior to expiration of the period herein authorized.

21. The grant of this permit is subject to approval by appropriate agencies of the State of Washington. A condition of the grant of this permit by the City is that any bond required by the City be in addition to any bond required by the State, and FURTHER, that in the event the City may have more stringent landscaping and restoration requirements than those approved by the State, then in that event Kent Highlands, Inc. will adhere to the City's requirements. Kent Highlands, Inc. shall conduct its operation on the site in such a manner that the nesting areas of blue herons on the site shall not be disturbed during the current nesting season, and FURTHER shall take whatever measures are necessary to discourage the herons from returning to the site at the next nesting season if operations are being conducted on the site at that time.

22. Kent Highlands shall provide to the City on January 1 and July 1 of each year commencing January 1, 1975, a report in writing stating the approximate amount of material removed during the preceding six (6) month period together with engineering data including but not limited to field survey notes, sufficient to enable the City to determine whether the terms and conditions of the permit are being met. The information shall be certified as accurate by a Licensed Professional Civil Engineer or Land Surveyor and shall be provided at Kent Highlands' expense.

If Kent Highlands fails to provide the necessary report, all operations shall immediately cease and shall not be resumed until receipt of the information and review by the City. The City shall not unreasonably delay review of any report submitted.

Section 4. This Ordinance shall take effect five (5) days after the passage, approval and publication as provided by law and upon receipt in writing by the City Clerk of Kent Highlands, Inc.'s acknowledgement of receipt of a certified copy of this Ordinance together with Kent Highlands, Inc.'s written acceptance of all the terms and conditions contained herein.

ATTEST:

ISABEL HOGAN, MAYOR

MARIE JENSEN, CITY CLERK
PASSED the 15 day of July, 1974.
APPROVED the 17 day of July, 1974.
PUBLISHED the 16 day of July, 1974.

I hereby certify that this is a true copy of Ordinance No. 1876, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

SEAL

MARIE JENSEN, CITY CLERK

Ordinance 1876 was vetoed by Mayor Hogan on July 17, 1974, was reconsidered by the City Council on August 5, and passed on that date.

PASSED the 5 day of August, 1974
APPROVED the 16 day of August, 1974
PUBLISHED the 16 day of August, 1974
August 2, 1974

TO: All Council Members
FROM: Mayor Isabel Hogan
SUBJECT: Veto of Ordinance #1876

I veto and return without signature Ordinance 1876 passed by the Kent City Council, July 15, 1974. Veto of this ordinance is based on the conditions of the permit, the justification for mineral extraction and the council's conduct in considering this application.

Conditions for the permit

Section 3.4
This condition is impractical to monitor without onsite inspection. The timing and need for fill material in Kent can not be predicted by either Kent Highlands or the City of Kent. Delivery restriction could make completion of the mining operation and restoration of the site impossible within the five year time limit.

Section 3.6
Breaks in the dikes of existing Kent Highlands holding ponds have allowed contamination of the Green River. No method of surveillance is detailed to prevent a recurrence.

Section 3.7
No procedure is outlined to insure storm water tests will be done to identify contaminants.

Section 3.11 and 3.18
A professional engineer qualified to interpret the detail of the grading permit should be on the site during all mining operations.
TO: All Council Members

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Section 3.16
No documentation is available to provide assurance that settling lagoons can successfully be reclaimed for agricultural use.

Section 3.20
The term "substantial" used regarding failure of performance and compliance with terms and conditions is subject to interpretation and definition by Kent Highlands, by the City of Kent and, ultimately, by the courts.

Justification for mineral extractions

1. Statement: "interests of citizens best served by committing substantial portion ......to industrial development". This statement is in conflict with the city's supportive position of the report on agricultural land use in the Central Puget Sound Region as adopted by the members of the Puget Sound Governmental Conference. The report requires reevaluation of land use regionally and the adoption of a Regional Development Plan including specific areas of concern such as land use, open space, water and air quality as mandated by the Northwest Federal Regional Council.

2. Statement: "savings in time and money for developers using local sources". The adverse effect to the whole community in air and water pollution, environmental damage, scarred hillsides and abandoned mining sites must be evaluated against the benefits to the developer.

3. Statement: "substantial current and future need". No emergency exists to warrant additional mining sites in the Green River Valley. In the City of Kent, 195 acres are filled and ready for development. Since 1967, only three sites representing fifty acres have been developed.
4. Statement: "best interests of the citizens of the City of Kent".

   a. The area to be mined is designated as Open Space in the PSGC Interim Regional Development Plan and the Kent Comprehensive Plan. Conference policy states areas with 30 to 50% slopes should be preserved in their natural state.

   b. Local and regional interests are not benefited by allowing a new mining operation when existing sites have not been fully utilized.

   c. The forfeit of land with the potential for nature study, bird sanctuary, etc. is contrary to the City of Kent's previous actions in retaining open space.

   d. Current review of the comprehensive plan will evaluate all development thru economic, environmental, physical and social criteria. Development standards must reflect citizen concern locally and regionally.

Council Conduct in hearing the application relative to the appearance of fairness

1. Members of the council were contacted individually by a Kent Highlands representative on June 1 prior to the June 3 public hearing.

2. A council member contacted Kent Highlands representative and suggested a condition for the mining operation to make it more acceptable to the council.

3. No debate or discussion at the June 3 public hearing by council members of the merits for allowing or denying the permit.

4. No review at the June 3 public hearing by Council members of the Planning Department or Planning Commission recommendations for denial of the permit. Discussion limited to review of conditions for allowing the mining operation.
5. Majority of council refused to re-open public hearing on June 17 to allow presentation of petition with 486 signatures, notwithstanding direction of petition-carriers at June 10 workshop to submit petitions to city clerk.

6. Council questioned lateness of presentation of petition; consistent previous support of Planning Commission recommendations by the Council would not indicate a need for citizens to appear at the public hearing with a protest petition.

/ldl