

71061

VOL 1887 Page 1791

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of Request for)
Conditional Use Permit 45-86) Klamath County Planning
for O'Connor Livestock Co.) Findings of Fact and Order

A hearing was held on this matter on November 25, 1986, pursuant to notice given in conformity with Ordinance No. 45.2, Klamath County, before the Klamath County Hearings Officer, Brad Aspell. The applicant was represented by Jack O'Connor. The Klamath County Planning Department was represented by Kim Lundahl. The Hearing Reporter was Janet Libercajt.

Evidence was presented on behalf of the Department and on behalf of the applicant. There were no adjacent property owners present.

The following exhibits were offered, received, and made a part of the record:

Klamath County Exhibit A, Staff Report

Klamath County Exhibit B, Plot Plan

Klamath County Exhibit C, Assessor's Map

Klamath County Exhibit D, Pictures (1&2)

Klamath County Exhibit E, Comments from Dept. of Geology and Mineral Industries

The hearing was then closed, and based upon the evidence submitted at the hearing, the Hearings Officer made the following Findings of Fact:

FINDINGS OF FACT:

1. Applicant O'Connor Livestock Co., is the owner of a substantial amount of real property situate south of the City of Klamath Falls. In particular the subject real property herein is described as the NE 1/4, NW 1/4 of Section 36, Township 40 Range 9 East Willamette Meridian, Klamath County Oregon, carrying a tax account number 4009-000-6200, which property lies approximately 1 mile northwest of the intersection of Township and Lower Klamath Lake Road. Subject property is approximately 25 acres in size and its location in respect to other property is shown by that drawing in Klamath County Exhibit C. The property is roughly trapezoidal in shape. Access is gained by an unnamed travelled way extending east from Lower Lake Road. The property is designated FR (Forestry Range) in the Klamath County Comprehensive Plan and carries a zone designation of F/R (Forest/Range). Topography of the property is steeply sloped upward west to east with grades in the range 35 to 50 percent up what is an unnamed hill. General drainage is through surface run off with vegetation on the subject property being brush and grass. The property is extremely rocky with a thin layer of overburden consisting of marginal soil. The property maintains a SCS soils classification of VIII and does not bear a timbersite productivity rating. Historical data suggests that at least during recorded history that the property has remained undeveloped rocky with small amount of mixed grasses and similar vegetation. Because of soil cover and excessive slopes the land is marginal grazing land. As is similarly the case along

that ridge. To the south is an existing barrow pit approximately
1 1/4 mile distant.

2 2. There is no water on the subject site, sewer system
3 approved, and the area is not served by electricity, telephone or
4 other traditional municipal services and is not located within any
5 existing fire district. While located within the attendance area
6 of Klamath County School District No. 1, the property is
7 uninhabited and consideration of schools is not applicable.

8 3. In 1986, the applicant removed the overburden and removed
9 rock and other fill material to supply the needs of a U.S. Bureau
10 of Reclamation project in Siskiyou County. After removal of
11 approximately 3,000 cubic yards of material, Klamath County
12 Planning Staff was advised of the operation of the rock quarry and
13 advised the applicant of his need for a local permit.

14 4. Until such time as 5,000 cubic yards are removed from the
15 pit, applicant remains qualified for granting of exemption from
16 the Department of Geology and Mineral Industries. If more than
17 5,000 cubic yards are to be removed from the pit, the State will
18 require reclamation plan and permit.

19 5. The site of the quarry activities are approximately 1 air
20 mile east of the intersection of Township Road and Lower Lake
21 Road. Although the quarry activity may be seen from the
22 intersection, the operation is, at its current intensity
23 unobtrusive visionally and environmentally. The hearings officer
24 finds that no noise, dust, or activities relating to the
25 extraction of the material have an adverse affect upon adjacent
26

property owners or legally permitted uses to persons residing within the immediate area.

6. The applicant intends to apply for and receive a grant of exemption from the Department of Geology and Mineral Industries.

7. This application is subject to the following provisions of the Klamath County Land Development Code, LDC Section 51.002(1) (R/S zone property development standards), LDC Section 44.003 (Conditional Use Permit Requirements, and provisions of the Klamath County Comprehensive Plan.

8. The Klamath County Planning Department Staff recommends approval as it believes this application meets conditions found within Section 51.021(D) of the Klamath County Land Development Code. To sustain approval, the 7 enumerated criteria of LDC Section 51.021(D)(1-7) must be met. In this regard the hearings officer finds:

A. The use must be compatible with forest uses. The Klamath County Comprehensive Plan Goal 4, has established this area as a forest/range under relevant policies (1) (6) and (7), being land for extreme conditions of climate, soil and topography require the maintenance of vegetation however irrespective of use, as other lands needed to protect farm or forest uses on surrounding designated agriculture or forest lands. In this regard the hearings officer must consider the existing forest use and those uses to which the land could be placed in an economic fashion. The hearings officer concludes that except for a thin layer of soil, the property is extremely rocky and extreme slopes coupled

with the lack of water make growth of ground cover other than
1 sparse native grasses unrealistic. The removal of overburden and
2 the quarrying of rock will not result in removal of any ground
3 cover, substantially change the slope, create problems with
4 erosion, land slide or the activities of rock quarrying affect the
5 permitted uses of the owners retained land or activities on
6 adjoining properties. Based upon the foregoing findings, the
7 hearings officer concludes that LDC Section 51.021(D)(1, 2, 3, 4)
8 have been met.

9 B. As stated above, the lands have received no timbersite
10 productivity rating, soil type includes Class VII soils, soil
11 which by its very nature is poor. The activity of quarrying the
12 rock in the hill result in the stripping of overburden and the
13 removal of rock, however this will not substantially alter the
14 slope of the hill. Accordingly the hearings officer finds that no
15 adverse affect on forest site productivity will result. LDC
16 Section 51.021(D)(5) has been met.

17 C. Article 69 of the Land Development generally involves
18 availability of fire protection service in areas rated high to
19 extreme for the potential fire danger.. Fire danger on the subject
20 property is generally that of grass fire. Based upon the lack of
21 public input from the Oregon Department of Forestry or any rural
22 fire protection districts, the hearings officer concludes that
23 heavy equipment which might necessarily ignite such a grass fire
24 will also be present on the site sufficient to extinguish one
25 should such occur. Additional removal of overburden, extraction
26

of rock does not constitute an activity constituting a fire hazard. LDC Section 51.021(D)(6) has been met.

D. Section (7) permits the County, as a condition of granting approval, to impose certain conditions. Based upon the conditions found at the end of this Order all the necessary review criteria found in Land Development Code Section 51.021(D) have been met.

9. Land Development Code Section 44.003(A) requires the finding that the use be conditionally permitted in the zone in which it is proposed to be located. As stated above, non-forest uses are permitted and forestry/range land subject to meeting certain enumerated review criteria which property has previously been demonstrated to meet. LDC Section 44.003(A) has been met.

10. Location, size, design and operating characteristics of the proposed use must be in conformance with the Klamath County Comprehensive Plan. In this regard, the hearings officer makes the following specific findings of fact.

A. Goal 1 (Citizen Involvement) has been met as notice has been given to adjacent property owners, affected public agencies, and Notice of Hearing published in the Herald & News, a hearing was conducted and an opportunity given for additional input and testimony. None was received within the letter from the Department of Geology and Mineral Industries no further input has been received.

B. Goal 2 (Land Use Planning), has been met in that the use qualifies under LDC Section 51.021(D), as a permitted conditional

use and hearings have been held according to the terms of the Klamath County Land Development Code as described herein.

1 C. Goal 4 (Forest Lands) has been met in that review
2 criteria found in LDC Section 51.021(D) are designed to protect
3 forest lands through the conditional use process.

4 D. Goal 6 (Air, Water and Land Resource Quality) has been
5 met. All the rock quarrying activity necessarily contributes
6 noise and dust, development of the subject property is
7 sufficiently removed from other properties lawfully permitted
8 activities in the immediate area so as not to constitute an
9 unwarranted infringement. In addition the applicant shall be
10 required to comply with the rules of the Department of Geology and
11 Mineral Industries, its primary goal is to protect air, water and
12 land resource quality.

13 E. Goals 3 (Agricultural Lands), Goal 5 (Open Spaces,
14 Scenic, Historic and Natural Resource Areas), Goal 7 (Natural
15 Disaster and Hazard Area), Goal 8 (Recreation Needs), Goal 9
16 (Economy of the State), Goal 10 (Housing), Goal 11 (Public
17 Facilities and Services), Goal 12 (Transportation), Goal 13
18 (Energy Conservation) and Goal 14 (Urbanization) do not apply to
19 this application.

20 11. Based on the foregoing location, size, design and
21 operating characteristics, the proposed use are in conformance
22 with the Klamath County Comprehensive Plan. LDC Section 44.003(B)
23 has been met.
24
25
26

12. The location, size, design and operating characteristics of the proposed development will be compatible and will not have significant adverse effects upon appropriate development and use of abutting properties in the surrounding neighborhood. The hearings officer draws this conclusion primarily from the following:

A. The property is geographically separated from properties owned by other people.

B. Staff report concludes that other than being physically visible no noise, dust or other activity will affect anyone off the property.

C. Based upon the lack of adverse comment or criticism.

D. Nevertheless the hearings officer is empowered to place certain conditions upon the grant of this application. In this regard the hearings officer imposes the following conditions to be necessary for protection of the public health, safety or welfare.

i. The hearings officer finds that the applicant shall apply for and receive a grant of exemption. Proof of exemption shall be submitted to the Klamath County Planning Department.

ii. The hearings officer further orders the applicant shall provide the Klamath County Planning Director with a notice of intent as to further rock quarrying activities subsequent to the date of this order. As a condition as to the grant of this application in order to proceed with further removal, the hearings officer requires that the applicant shall present a plan of reclamation (if one is not required by the State of Oregon)

whereby the slope of the quarry will be returned to a condition approximating the natural slope of the hill during the period of gravel extraction, which plan shall be submitted to the Planning Director, not later than December 31, 1987, in the event the applicant intends further extraction.

iii. Upon failure of the applicant to so submit a plan of reclamation, on or before said date, the Planning Director shall refer this matter for further review to the Klamath County Hearings Officer, and the assigned hearings officer shall take testimony and evidence and impose a plan of reclamation taking into consideration topography, slope, quantity of materials extracted and such other factors as would be necessary to restore the hillside to a natural appearing fashion.

13. Based upon the foregoing findings of fact, the hearings officer makes the following conclusions of law

CONCLUSIONS OF LAW

1. That the use is conditionally permitted in the zone in which it is proposed to be located.

2. That the location, size, design and operating characteristics of the proposed uses are in conformance with the Klamath County Comprehensive Plan.

3. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not have significant adverse effects on the appropriate development and use of abutting properties and the surrounding neighborhood.

4. Based on the location, size, design and operating characteristics of the proposed development will be compatible with and not have significant adverse effects upon appropriate development and use of abutting properties in the surrounding neighborhood subject to the terms and conditions set forth above.

Therefore it is hereby ordered that a conditional use permit from Land Development Code Section 51.021(D) for mineral extraction on real property described as:

"NE 1/4, NW 1/4 of Section 36, Township 40 Range 9 East Willamette Meridian, Klamath County Oregon"

is hereby approved with conditions.

Entered Klamath Falls, this 3 day of February, 1987.

KLAMATH COUNTY HEARINGS OFFICER
BY: Bradford J. Aspell
BRADFORD J. ASPELL

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of February A.D., 19 87 at 10:18 o'clock A M., and duly recorded in Vol. M87 of Deeds on Page 1791.

FEE

NO FEE

Return: Commissioners' Journal

Evelyn Biehn, County Clerk
By Sam Smith