

87 MAR 5 PM 2 33

72028

BEFORE THE HEARINGS OFFICER

Vol. 187 Page 3544

KLAMATH COUNTY, OREGON

In the Matter of a Request for) Case No. 1-87
CONDITIONAL USE PERMIT)
for) FINDINGS OF FACT,
PAUL BREITENSTEIN) CONCLUSIONS OF LAW
AND DECISION

THIS MATTER came on for hearing before Assistant Hearings Officer, JAMES R. UERLINGS, on the 19th day of February, 1987, at 10 A.M. in the Klamath County Commissioners' Hearing Room. The hearing was held pursuant to notice given in conformity with the Klamath County Development Code and related ordinances. The applicant was represented by Douglas E. Adkins and the Klamath County Planning Department was represented by Kim Lundahl.

The following exhibits were marked, entered and received into evidence: Exhibits "A" through "I".

The Assistant Hearings Officer, after reviewing the evidence presented, makes the following findings of fact, conclusions of law and decision.

FINDINGS OF FACT:

1. The applicant has applied to expand mineral extraction activities on his property West of the Stewart-Lenox area in Klamath County. The mineral extraction activities have been ongoing in the adjacent "Balsam Pit". This older pit, however, is played out and a new source of materials is required, particularly to complete the construction of the Southside ByPass, West of Washburn Way, to Highway 97. This site has

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION, Page 1.

BOIVIN & UERLINGS, P.C.
ATTORNEYS AT LAW
110 NORTH SIXTH STREET, SUITE 209
KLAMATH FALLS, OREGON 97601
(503) 884-8101

1 sufficient materials to complete the Southside ByPass and is in
2 close proximity to the Bypass of any of the existing rock pits.

3 2. The property is located North of Balsam Drive, 1
4 1/2 miles West of Long Lake Road intersection, Klamath County,
5 Oregon. The legal description is the S 1/2 SE 1/4 of Section 3
6 and the N 1/2 NE 1/4 of Section 10, Township 39S, Range 8E,
7 Klamath County, Oregon.

8 3. The property's Plan Designation is Forest/Range
9 and the Zone Designation is Forest/Range. The property consists
10 of 160 acres, rectangular in shape. The topography consists of
11 moderately to steeply sloped areas. General drainage consists of
12 surface drainage, modified by mineral extraction site activities.
13 Vegetation consists of brush, grass, and scattered pines. From a
14 trip to the site, it appears that the extraction activity will be
15 somewhat protected from view from any residences or activities
16 within close proximity of the site by the vegetation.

17 4. Access to the property is off Balsam Drive.

18 5. The soil class is Class VIII and the Timber Site
19 Productivity Rating is VII.

20 6. Surrounding lands consist of large undeveloped
21 parcels. Adjacent and surrounding zoning consists of FR to the
22 North, South and West and NR to the East.

23 7. Public facilities and services serving this site
24 consist of water by individual wells, sewer by individual
25 subsurface systems, fire protection by the Keno Rural Fire
26 Protection District and electricity and/or gas by Pacific Power &
27 Light. The Klamath County School District serves this property.

28 8. There were no surrounding property owners that

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION, Page 2.

1 appeared in opposition to the request for a conditional use
2 permit.

3 9. Pacific Power & Light expressed concern in regards
4 to the location of the blasting areas and the proximity to their
5 easement across the Southeasterly corner of the property for a
6 power line. The concerns of Pacific Power & Light were
7 apparently alleviated by their agreement to a condition proposed
8 by the applicant which is further set forth in this Order.
9 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

10 1. Klamath County Development Code Section 44.003
11 sets forth the criteria for consideration in the application of a
12 conditional use permit:

13 A. That the use is conditionally permitted in
14 the zone in which it is proposed.

15 B. That the location, size, design and operating
16 characteristics of the proposed uses is in conformance with the
17 Klamath County Comprehensive Plan.

18 C. That the location, size, design and operating
19 characteristics of the proposed development will be compatible
20 with, and will not adversely effect, the livability or
21 appropriate development of abutting properties in the surrounding
22 neighborhood. Consideration shall be given to the harmony in
23 scale, bulk and utilities; to harmful effects, if any, upon
24 desirable neighborhood character; to the generation of traffic
25 and the capacity of surrounding streets and to other relevant
26 impact of development.

27 ///

28 ///

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION, Page 3.

1 KLAMATH COUNTY GOALS AND POLICIES COMPLIANCE:

2 See Exhibit "A" attached hereto and incorporated by
3 this reference.

4 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

5 1. The proposed use is conditionally permitted under
6 th Klamath County Land Development Code for the zone in which it
7 is proposed.

8 2. The location, size, design and operating
9 characteristics of the proposed use are in conformance with the
10 Klamath County Comprehensive Plan if conditions as imposed herein
11 are applied.

12 3. The location, size, design and operating
13 characteristics of the proposed development will be compatible
14 with, and will not have a significant adverse effect on, the
15 appropriate development and use of abutting properties and the
16 surrounding neighborhood when the conditions as set forth herein
17 are applied. Consideration has been given to harmony in scale,
18 bulk, coverage and density, to the availability of utilities, to
19 the harmful effects (if any), upon the desirable neighborhood
20 characteristics and livability, to the generation of traffic and
21 the capacity of surrounding streets and to other relevant factors
22 effecting the impact of this development.

23 4. The following conditions are deemed necessary to
24 protect the health, safety and welfare of the citizens of Klamath
25 County:

26 A. The facility shall be operated from Monday
27 through Saturday from 6:30 A.M. to 11 P.M., provided, however,
28 that no blasting shall occur upon the property prior to 7:30 A.M.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION, Page 4.

1 nor after 6:30 P.M.

2 B. The applicant shall control dust from all
3 activities upon the property by use of water, oil or other
4 liquids which are recognized within the industry for the control
5 of dust for these types of activities. At a minimum, the
6 applicant shall water all access roads to the property at least
7 once daily.

8 C. The applicant shall control the breeding of
9 pests and insects upon the property by treating any standing
10 water there.

11 D. The applicant shall use his best efforts to
12 visually screen the excavation activity from other properties.

13 E. The applicant shall use the accepted
14 practices of the industry in preventing any blasting material
15 from escaping the property or damaging the Pacific Power
16 facilities on the property.

17 F. The applicant shall follow all conditions of
18 State law and any permits he has received in the blasting and
19 excavation activities and shall apply for all permits required
20 prior to commencing activity upon the property.

21 G. The applicant shall develop access roads in a
22 manner to circumvent any residential areas to reduce dust and
23 noise to the residences.

24 H. The applicant shall follow all applicable
25 State and Federal laws in affecting the air and water quality and
26 in reclaiming the land.

27 I. The applicant shall use his best efforts to
28 protect trees, vegetation, water resources, wildlife habitat and
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION, Page 5.

1 other significant resources upon the property during the
2 excavation and mineral extraction.

3 J. The applicant shall not conduct any blasting
4 activities within the portion of the proposed site as listed on
5 Exhibit "B" attached hereto and incorporated by this reference.


6 CONCLUSIONS OF LAW AND DECISION:

7 1. This request for a conditional use permit on the
8 subject property meets all applicable Klamath County Development
9 Code criteria and policies governing such.

10 2. This request for a conditional use permit is
11 consistent with, and complies with, all applicable Klamath County
12 land use planning policies.

13 THEREFORE, IT IS HEREBY ORDERED that this request for a
14 conditional use permit on the subject property is granted,
15 subject to the applicant following the conditions as set forth
16 above and following the plot plan as submitted.

17 DATED this 3 day of March, 1987.

18
19
20
21 
22 JAMES R. UERLINGS

23
24
25
26
27
28
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION, Page 6.

Conformance with Relevant Klamath County Policies:

Goal 1 - Citizen Involvement:

A public hearing on this matter has been set for February 19, 1987. Notice has been sent to surrounding property owners, concerned public agencies, posted in public places, and published in the Herald & News.

Goal 2 - Land Use Planning:

The property is zoned for forest use. The Hearings Officer must find the application for non-forest use complies with Section 51.021(D) of the Land Development Code.

Goal 4 - Forest Lands:

Relevant Policies:

1. The following lands shall be designated forestry and shall be subject to the regulations of the Forestry and Forest/Range zones contained in the Land Development Code:
 - (1) Public or private industry forest lands located contiguously in large blocks, i.e., National Forest Service, BLM, Weyerhaeuser, Gilchrist timber lands;
 - (2) Significant wildlife and fishery habitat areas;
 - (3) Land having a predominant timber site productivity rating of I-VI;
 - (4) Isolated pockets of land within forest areas which do not meet the above criteria;
 - (5) Lands needed for watershed protection of recreation;
 - (6) Lands where extreme conditions or climate, soil and topography require the maintenance of vegetation cover irrespective of use;
 - (7) Other lands needed to protect farm or forest uses on surrounding designated agricultural or forest lands.
3. Existing forest uses shall be protected unless proposed land use changes are in conformance with the Klamath County Comprehensive Plan.
4. The County shall regulate development of non-forest uses in forested areas.

Conformance with Relevant Klamath County Policies Continued:

Goal 6 - Air, Water and Land Resource Quality:

Use of the property as a borrow pit is subject to yearly review by the Department of Geology and Mineral Industries.

Goal 7 - Natural Disaster and Hazards Area:

The County shall consider site constraints in evaluating land use in fire hazard areas.

The conditional use permit site is not within a fire protection district. The intensity of use proposed does not pose a significant fire hazard.

Goals 3, 5, and 8-14 do not pertain or are not affected by this application.

3552

That portion of the NE 1/4 NE 1/4 of Section 10, Township 39 South, Range 8 East W.M., lying southeasterly of a line which is parallel to and 200 feet northwesterly of the center line of Power Transmission Line 59, owned by Pacific Power & Light.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the _____ 5th day
 of March A.D., 19 87 at 2:33 o'clock P M., and duly recorded in Vol. M87
 of _____ Deeds on Page 3544
 By Evelyn Biehn, County Clerk

FEE NO FEE

Return: Commissioners' Journal

EXHIBIT "B"