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BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request)
for a Conditional Use Permit)
for HILDEGARD O. HICKS.)

C.U.P. 14-87
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

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This matter came before Hearings Officer William M. Ganong on June 4, 1987 in the Klamath County Commissioner's Hearing Room. The Hearing was held pursuant to the Notice given in conformity with the Klamath County Land Development Code and related ordinances. Hildegard O. Hicks, the Applicant, was present and represented herself at the Hearing and the Klamath County Planning Department was represented by Mr. Kim Lundahl and the Recording Secretary was Janet Libertajt. The Klamath County Planning Department file and all contents thereof were incorporated in the record as evidence. The County 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 for a Conditional Use Permit for a mineral extraction site on 40 acres of land zoned EFU-CG. The subject property is generally located south of the Wilson Cemetery and one-half mile west of Highway 97 near the Williamson River. The property is located in Sections 16 and 21, Township 35 S., Range 7, E., W.M. and is Klamath County Tax Assessor Account No. 3507-21-1000.
2. The Hearings Officer viewed the subject property and adjoining property with Planning Department staff on June 4, 1987.

3. The Applicant intends to develop a rock quarry on the subject property. The Applicant testified that she would remove less than 5,000 cubic yards of rock per year. There would be no crushing equipment or other processing equipment on the subject property. The rock would be removed from the quarry, loaded into dump trucks and then removed from the subject property.

4. The subject property has exposed gravel or rock on its surface. It is sparsely covered with grass and sagebrush. The Applicant testified that it cannot be farmed because of problems providing irrigation water to this property. However, the Hearings Officer observed that the adjoining parcel owned by the Applicant located due west of the subject property and at the same elevation and topography was under sprinkler irrigation. It does not appear to the Hearings Officer that it would be difficult or cost prohibitive to irrigate the subject parcel. However, it does appear that the soil at the site which the Applicant intends to develop the quarry is very shallow and rocky and would not support an agricultural crop.

5. Access to the property is via State Highway 422 and the Wilson Cemetary Road. State Highway 422 is paved. The Wilson Cemetary Road is gravelled. There are several private residences immediately adjacent to the Wilson Cemetary Road.

6. Rawley Wirth, the owner of the property which adjoins the subject property to the south, testified that he had no objections to the subject application as long as the rock quarry site is set

back at least 100 yards from his property line. Mr. Wirth farms and raises cattle on his property.

7. Coralie Nelson, owner of the property that adjoins the subject property to the east, testified that she and her son have developed a gravel pit and ponds on their property; that they have been developing the pits and ponds so that when they have been mined they can be converted into fishing lakes or ponds; and that they intend to develop their property as a recreational overnight park and fishing area. Mrs. Nelson testified that she obtained a Conditional Use Permit in 1982 to develop the subject recreational park. Mrs. Nelson testified that she is in the process of developing a bed and breakfast and horse motel on her property. Mrs. Nelson is concerned that the development of a quarry on the subject property may interfere with the operation they had planned to develop. The Hearings Officer viewed the Nelson property and observed the ponds and gravel pit on the property. The Nelson gravel pits are screened from the adjoining lands by quaking aspen, pine trees and other vegetation. Mrs. Nelson testified that she is concerned that dust and noise generated by a quarry on the Hicks' property will interfere with the planned use of her property.

8. The Findings set forth in the staff report dated May 28, 1987 prepared by Kim Lundahl are incorporated herein by this reference.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA

Section 51.018 in the Klamath County Land development Code allows as a Conditional Use, extensive impact services which include mineral exploration and extraction. A Conditional Use Permit granted pursuant to Section 51.018 requires that Findings be made pursuant to Section 44.004 (F) and Section 51.018 (C).

KLAMATH COUNTY LAND USE GOALS AND POLICIES COMPLIANCE

The Goals and Policy Findings on the Klamath County Planning Department Staff Report are hereby adopted and incorporated herein by this reference.

KLAMATH COUNTY CODE FINDINGS OF FACT AND CONCLUSIONS

A. Section 51.018 (C) requires the following Findings supported by substantial evidence in the record:

- (1) That the proposed use does not interfere with accepted farming practices on adjacent lands. The farming practices on adjacent lands include the farming and grazing practices on land owned by the Hicks which adjoins the site of the proposed quarry, and the land owned by Rawley Wirth, which also adjoins the subject site. Mr. Wirth testified that he felt there would be no interference by the quarry so long as it was set back from his property line approximately 100 yards. There is no evidence in the record to indicate that the operation of the quarry at the level requested by the applicant will interfere with any farming practices on any adjacent lands.
- (2) Whenever possible the proposed use must be situated on land unsuitable for farm use. The subject parcel could be

irrigated by sprinkler irrigation in the same manner that the adjacent land is being irrigated. However, the lack of soil at the subject site evidenced by the visible rock and gravel on the surface and the lack of other vegetation demonstrates that the property is generally unsuitable for the raising of any agricultural crop or for grazing uses.

(3) Whenever possible the proposed use should not be located upon property classified predominantly as Class I - IV. The County staff report indicates that the SCS classification for the subject property is IV. However, the visual inspection of the property demonstrates that the SCS classification applied to the property must be incorrect as there are no soils of any significance at the location of the proposed quarry operation and the quarry operation is not supporting growth of significant vegetation.

(4) The access to the property must be designed so as not to interfere with accepted farming practices on surrounding land. Wilson Cemetary Road connects the subject property to Highway 422. Wilson Cemetary Road runs adjacent to a Residential Recreational Subdivision but is not adjacent to any agricultural land other than that of the Hicks. The access to the subject property will not interfere with any accepted farming practices on the subject property or any surrounding land.

Section 44.003 sets forth three additional criteria upon which findings must be found. Those criteria are:

(1) That the use is conditionally permitted in the zone in which it is proposed to be located. As set forth above, the EFU-CG zone which applies to the subject property does allow mineral extraction as a conditional use.

(2) Findings that the location, size, design and operating characteristics of the proposed use are in conformance with the Klamath County Comprehensive Plan are required. The relevant comprehensive plan criteria are set forth in the Planning Department Staff Report which has been incorporated herein by reference. At the scale anticipated by the Applicant, the operation of the quarry without crushing equipment or other large machinery, other than loading machinery, is in conformance and compliance with the Klamath County Comprehensive Plan and will not adversely effect adjoining agricultural uses.

(3) Findings that the location, size, design and operating characteristics of the proposed development will be compatible with and will not have significant adverse effect on the development and use of abutting properties in the surrounding neighborhood are required. So long as the operation does not exceed a level of 5,000 cubic yards of material removed per year and complies with the conditions set forth hereafter which include the maintenance of appropriate buffers between the subject site and the adjoining lands the operation of the proposed quarry will not have a significant adverse effect on the uses of the abutting properties.

CONCLUSIONS OF LAW AND ORDER

The subject application for a Conditional Use Permit for a mineral extraction site on the real property described above is granted subject to the following conditions:

1. That the applicant shall comply with all requirements of the Klamath County Land Development Code, Building Code and Oregon State Laws which regulate the use and reclamation of mineral extraction sites.

2. That the applicant shall not remove any materials or store any materials or operate any heavy equipment within 100 yards of the applicant's southerly property line, which property line is the northerly property line of the land owned by Rawley Wirth.

3. The applicant shall not store any materials, remove any materials, or operate any heavy equipment within 150 feet of her easterly property line which is the boundary line common to the applicant's land and the land owned by Coralie Nelson. The applicant shall construct a berm using materials located on the subject property which shall shield the mineral extraction site from the property owned by Mrs. Nelson. The applicant shall plant and encourage the growth of native trees such as Aspens and Pine trees in the area between the berm and the Nelson's property line. The berm shall not be located closer than 20 feet to said property line. The applicant shall construct the berm prior to removing materials from the applicant's property. The applicant may use materials from the subject site to construct the berm. The

applicant may also use such heavy equipment as is reasonable to construct the berm. The berm shall extend southerly and northerly not less than 50 feet beyond the ends of the extraction pit developed by the applicant and shall be not less than eight feet in height.

4. The applicant shall not remove more than 5,000 cubic yards of material from the subject site per year exclusive of materials used to construct the berm described above.

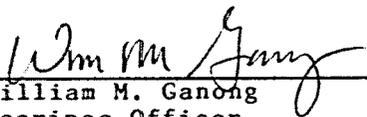
5. The applicant shall not operate any crushing equipment, screening equipment or other processing equipment on the subject site. The applicant may use such machinery as is necessary to dig and load the materials which will be removed from the subject site.

6. The applicant shall water the Wilson Cemetary Road as is necessary in order to reasonably abate the dust created by traffic on said road on any day during which the applicant intends to remove more than three truck loads of material from the subject property.

7. The Klamath County Planning Director shall, on an annual basis, review the applicant's compliance with the conditions set forth above. If, in the opinion of the Planning Director, the applicant is failing to comply with the criteria set forth above, or if the use of the subject property as a mineral extraction site is interfering with agricultural uses on adjoining property, the Planning Director shall schedule such a further hearing before the Hearings Officer of Klamath County, Oregon. At said Hearing, the

Hearings Officer shall consider any alleged violations of the above said conditions or any adverse effect that the operation of the quarry may be having on adjoining agricultural uses and may revoke or further restrict this Conditional Use Permit.

DATED this 30th day of June, 1987.



 William M. Ganong
 Hearings Officer

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Department the 7th day
 of July A.D., 19 87 at 9:08 o'clock A.M., and duly recorded in Vol. M87,
 of Deeds on Page 11846.

Evelyn Biehn, County Clerk
 By 

FEE NONE

Return: Commissioners' Journal