

## BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request )  
for a Conditional Use Permit )  
for I. F. RODGERS & SONS. )

C.U.P. 4-89  
FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter came before Hearings Officer William M. Ganong on May 4, 1989 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. The applicants were present and represented themselves at the hearing. The Klamath County Planning Department was represented by J. Kim Lundahl and the Recording Secretary was Karen Burg. The hearing was continued to and concluded on June 1, 1989. The Klamath County Planning Department file and all contents thereof were incorporated in the record as evidence.

The applicant, I. F. Rodgers & Sons, is a family partnership involved primary in raising hay and beef cattle on a 5,100 acre ranch in Klamath County, Oregon. The Applicant requests a Conditional Use Permit to establish two commercial rock quarries on land owned by the Applicant. The relevant facts concerning the two proposed sites are substantially different and will be discussed separately. The County Hearings Officer, after reviewing the evidence presented, makes the following Findings of Fact, Conclusions of Law and Decision:

## THE POE VALLEY SITE

A.

FINDINGS OF FACT

1. The Poe Valley site is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  OF Section 4, T. 40S., R. 11E., W.M. The property is zoned FR-Forestry Range.
2. The Applicant has used the Poe Valley site for approximately nine years as a source of gravel for the roads on Applicant's ranch.

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3. The Applicant desires a Conditional Use Permit pursuant to KCLDC §51.021(C)(8), to allow them to sell the gravel to neighbors and other interested persons. The developed quarry and stockpile will not exceed one acre in size and not more than 5,000 cubic yards of material per year will be removed from the site.
4. The photographs of the site in evidence show that the site is on a gently sloping hillside. The area is typical of Eastern Oregon desert-range land. Vegetation consists primarily of bunch grass, sage brush and scattered juniper trees.
5. The USDA-SCS Soil Survey of Klamath County, Oregon, estimates that one-acre of juniper hillside in the Poe Valley area produces between 300 and 900 pounds of dry weight grass per year. Said production will support one cow/calf for 5 to 17 days per year. Irrigated pasture in the Poe Valley will support one cow/calf for 60 to 90 days.
6. The timber site rating for this area varies from V to VII. The pictures show that the site and general area are devoid of merchantable timber species.
7. The immediate area of the quarry site is exposed rock and gravel and does not support vegetation.
8. The irrigated portion of Poe Valley lying below and one mile east of the subject site supports a scattered population of mule deer. However, the area is not included in any Goal Five wildlife range.
9. There are no apparent extreme conditions of climate, soil, or topography which require the maintenance of vegetative cover.
10. The quarry site lies within the Applicant's ranch and two miles from the nearest residence. Access is over a road owned and maintained by the Applicant. Water is available nearby.

11. The predominant forest use in the area is summer livestock grazing. The quarry has been in operation for nine years with no conflict with said forest use and is used in conjunction with the Applicant's ranching operation.

E.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA

This application is subject to the following Klamath County Land Development Code Sections:

- a. KCLDC §51.021(C)(8) allows mineral and aggregate exploration and extraction in the Forestry range zone.
- b. KCLDC §51.020(D) sets forth the criteria for reviewing applications for conditional use permits in the Forest-range zone.
- c. KCLDC §44.003 sets forth the criteria for reviewing applications for conditional use permits generally.
- d. KCLDC §81.001-004 sets forth the standards and criteria for reviewing an application for the operation of a mineral and aggregate extraction site. (Klamath County adopted changes to KCLDC Article 81 on May 23, 1989. Klamath County legal counsel has ruled that said changes do not apply to pending applications. Therefore the provisions of Article 81 existing at the time the subject application was filed will be applied to this Application.)

C.

KLAMATH COUNTY LAND USE PLAN, GOALS AND POLICIES

This application is subject to the following Klamath County Land Use Plan Goals;

- a. Goal Three Agricultural land;
- b. Goal Four Forest lands; and
- c. Goal Five Natural Resources.

The policies provided under Goal 3-Agricultural Land are designed to prevent the parcelization and urbanization of agricultural land. The subject land use request does not violate those policies.

The policies provided under Goal 4-Forest lands are intended to perserve forest land for forest uses. One of the forest uses provided in said policies is "(4) Grazing of Livestock." In order to carry out said policy, lands such as the subject property with juniper, sage brush and bunch grass vegetation have been zoned for Forest-range use.

The policies provided under Goal 5-Natural Resources are intended to identify and protect significant natural resources. Included in the resources which this zone is intended to protect are minerals and aggregate resource sites. At the time the County adopted its Comprehensive Plan it had not undertaken a comprehensive inventory of mineral resource sites. The land development code and policies under Goal 5 provide for the protection of said sites using an overlay zone which limits conflicting uses. Policies under Goal 5, particularly policies 23, 24 and 25, recognize the need to preserve and protect mineral extraction sites for current use and future use.

Evaluation of any land use application requires the balancing of conflicting or potentially conflicting policies under various land use goals. Said balancing will be discussed in further detail in the conclusion made herein below.

Other policies of the Klamath County Comprehensive Plan are also applicable to this land use application. However, those policies have been implemented through zoning and property development standards contained within the Land Development Code.

D.

FINDINGS OF FACT AND CONCLUSIONS

1. The subject application to develop a mineral extraction site in Poe Valley is compatible with the existing forest uses. The existing forest uses are primary cattle grazing. There is a transient population of deer and other big game animals and birds which are found in the area, particularly during the winter migration period. The Applicant has testified that the subject site will not be used during the wintertime and the conditions set forth herein below will assure that said use will not be made. The subject property is not part of any recognized critical habitat. The proposed site will be compatible with and is compatible with the forest usage.

2. The proposed use does not interfere seriously with accepted forestry practice on adjacent land devoted to forest use. The subject area contains no commercial timber species. The forest uses in the area are generally cattle grazing and the forestry practices call for the movement of cattle from range to range as the food sources are depleted. The proposed use will not interfere at all with those practices.

3. The proposed use will not materially alter the stability of over all land use patterns in the area. The Applicant will not be partitioning or otherwise isolating the parcel of land upon which the aggregate site is located from the balance of its ranching operation. This permit will not create any new parcels or any new land uses as the Applicant has used the proposed site for its own purposes for at least nine years. There is no evidence in the record whatsoever indicating that the proposed use will in any way alter the stability of the land use pattern of the area.

4. The proposed site is on land that is generally unsuitable for the protection of forest crops and livestock. The proposed site is approximately

one acre in size. Gravel and rock are exposed on the surface of the land and it does not support any vegetative cover. The site is located on a gently sloping hill and there is no indication of any adverse soil, drainage or flooding problems which would adversely affect the site or any of the surrounding land. The site is isolated and located approximately two miles from the nearest residence and is ideally suited for the proposed purpose.

5. The proposed site is not in a wildfire hazard area and an adequate water supply is available to the property. Access to the property is provided by deeded access owned and maintained by the Applicant. No public services will be required for the subject operation.

6. As pointed out above under the Land Development Code Criteria, the proposed use as a mineral extraction site is conditionally permitted in the forest/range zone. The location, size, design and operating characteristics of the proposed use are in conformance with the Klamath County Comprehensive Plan. The proposed use is small in scale and involves minimal onsite processing. The equipment used on site is primarily farm equipment that is used in other parts of the Applicant's ranching operations. The rock removed from the site will continue to be used on the Applicant's property as well as on neighboring farming operations. As the land involved has little resource value except as a mineral extraction site the proposed use represents a good balance of the competing policies contained in Klamath County Comprehensive Land Use Plan.

7. The location, size, design and operating characteristics of the proposed development will be compatible with and will have no significant adverse effect on the appropriate development and use of abutting properties or surrounding neighborhood. The proposed use is in conjunction with and compatible with the existing agricultural operation. The Applicant has operated the site for nine years for its own use with the same equipment which

will be used at the site as rock is sold to neighboring land owners. The site is small, not more than one acre, and not more than 5,000 cubic yards of material per year will be removed from the site. The site will use private roads for access to Poe Valley Road which is a County maintained and paved road. The Applicant's 5,000 acre ranch surrounds the proposed site. The site is a significant distance from neighboring properties and other land uses. The proposed use is compatible with the existing and appropriate uses in the neighborhood.

8. As the proposed site is less than one acre in size and not more than 5,000 cubic yards of material per year will be removed from the proposed site there are no state or federal regulations or statutes which apply to this operation. Consistent with its past practice the County will impose its own reclamation standards which are required herein below.

9. At the proposed volume, the access road which serves the proposed site can accomodate the approximate 3 to 10 additional round trips per day during the months in which operation is expected. As the primary access is owned by the Applicant and subject to its control and maintenance there will be no danger to the public health, safety and welfare.

10. Adequate water is available to the site. The Rodgers testified that they have a tanker truck for their use in providing water as needed.

11. There will be no blasting involved with the extraction of the gravel from this site. The aggregate is loose and will be scooped up with a tractor and poured into the Applicant's crushing machine.

E.

ORDER AND CONDITIONS

The Applicant's request for a Conditional Use Permit to operate a mineral extraction site at the Poe Valley site described hereinabove is hereby approved, subject to the following conditions:

1. Prior to providing any aggregate other than for use on Applicants property, the Applicant shall provide to the Klamath County Planning Director for his review and approval a reclamation plan for the site which said plan will insure that during the Applicant's use of the site and at such time the site has been fully mined the site will not create an unnecessary danger to people or wildlife;
2. This permit shall be for a period of three years and shall terminate on June 30, 1992;
3. The Applicant shall maintain a log showing the dates and times of operation of machinery and equipment at the site and the number of truck trips and quantity of material removed from the site during the period of this permit. Said log shall be available upon 24 hours notice for inspection and review by the Klamath County Planning Director or his designee. The log shall be delivered to the Planning Director and made a part of the Planning Department file concerning this matter on an annual basis;
4. No blasting shall be used in removing aggregate from the subject site. At no time shall the site exceed one acre in size and no more than 5,000 cubic yards of material shall be removed from the site in any 12 month period. No more than 100 cubic yards of material shall be removed from the site in any 24 hour period;
5. The Applicant shall apply water or other dust control measures so that an unreasonable amount of dust will not be generated by the project; and

6. The Applicant shall not use the site from November 15 to March 15 of each year.

### THE DODDS HOLLOW SITE

A.

#### FINDINGS OF FACTS

1. The Applicant has applied for a Conditional Use Permit to operate a second mineral extraction site on land described as the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, Township 40 S., Range 11 E., W.M., Klamath County, Oregon. This site lies at the north end of an area known as Dodds Hollow and is hereinafter referred to as the Dodds Hollow Site.

2. The physical characteristic of this site are similar to the Poe Valley Site. The site is located on a gently sloping hill. The aggregate is exposed and the area of the site supports no or very little vegetative growth. The Dodds Hollow Site is approximately 2 miles from the Poe Valley site and lies one mile and one-half miles northwest of the Dodds Hollow residential subdivision.

3. The application for the Dodds Hollow mineral extraction site met with strong opposition from land owners of lots in and near Dodds Hollow Estates. Dodds Hollow Estates is located in the easterly  $\frac{1}{4}$  of Section 20 of the same township and range, and is approximately one and one half miles south of the subject site. The access road to the subject site, over which the Applicant has deeded access, follows the westerly border of Dodds Hollow Estates. Dodds Hollow Estates is composed of 15-20 acres lots. There are currently five residences in Dodds Hollow. In addition there are several other residences within one half mile of Dodds Hollow Estates.

5. The objections of the Dodds Hollow residents and land owners are summarized as follows:

a. The primary concern of the opponents are that trucks entering and exiting the Dodds Hollow mineral extraction site will use a portion of Dodds Hollow Road which also serves as access to Dodds Hollow Estates. Dodds Hollow Road, a county road, is used by the residence as their sole means of ingress and egress from the subdivision. Currently, the County school bus picks up and delivers children at the intersection of Dodds Hollow Road and Taylor Road which is located approximately 3/4 of a mile south of the Dodds Hollow Estates. The residents are concerned that Dodds Hollow Road is not wide enough to allow safe passage of opposing traffic; that it is not well maintained by the County; that heavy truck traffic on the road will cause a dangerous situation for the school children waiting for and returning from the school bus along the road and that use of the road and the adjoining privately own access to this extraction site will create dust in this area.

b. The Dodds Hollow residents believe that environmental studies should be done to determine the affect that the proposed extraction site may have on bald eagles, elk, deer, grouse, migratory wildlife, wildfowl and other birds and animals located in this area. The residents testified that the airflow patterns in the area are such that at times the air becomes stagnant and that the dust created by access to the site and in the operation of the site will hang in the hollow. William J. Bishop, who testified twice concerning the potential impact on wildlife and fowl in the area also testified that if the site was limited to 5,000 cubic yards of material per year the wildlife may not be affected, but that if the use expands the wildlife will be affected. The residents are also concerned that the processing equipment used at the site could expand to include an asphalt batch plant and/or concrete plant, which uses would further add to the air quality problems in the hollow.

3. The Applicant responded to the concerns raised by the Dodds Hollow Residents as follows:

a. The Applicant correctly points out that this case involves a classic land use conflict. Under current planning laws it most likely would not be possible to plat a residential subdivision similar to Dodds Hollow in an agricultural area or in an area where residential use could become a conflicting use for mineral extraction. Article 83 in the Land Development Code lists residential use and human activity as conflicting uses for mineral extraction resources, big game ranges, fish and wildlife resources and most of the other significant resources identified by the code.

b. The Applicant predicts that the average number of daily truck loads from the site will be between 4 and 6 loads per day over an eight month period. The pit will not be used during the winter months and therefore, will not conflict with the migration of deer through the area during the wintertime. The Applicant correctly states that in the land planning process no significant wildlife habitat was mapped in this area and that the area is not designated for protection of such habitat.

c. The Applicant has offered to not use the access road for a one half-hour during the morning and another one half-hour in the afternoon at the time when bus is scheduled to pick up or drop off children. The Applicant also points out that by opening the proposed quarry a rock source for the upkeep of the Dodds Hollow Road will be located nearby.

d. A water well and several reservoirs are located near the site and the Applicant has equipment available to control the dust generated : the site and on the access road.

B.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA

The code criteria set out in the Poe Valley site findings, hereinabove, are adopted herein by this reference.

C.

KLAMATH COUNTY LAND USE GOALS AND POLICIES

The goals and policy statements contained in the Poe Valley site criteria set forth herein above are incorporated herein by this reference.

D.

CONCLUSIONS

1. The subject application to develop a mineral extraction site in Poe Valley is compatible with the existing forest uses. The existing forest uses are primary cattle grazing. There is a transient population of deer and other big game animals and birds which are found in the area, particularly during the winter migration period. The Applicant has testified that the subject site will not be used during the wintertime and the conditions set forth herein below will assure that said use will not be made. The opponents testified that the proposed use will not be incompatible with the wildlife habitat if the size and use of the site is limited as provided below. The subject property is not part of any recognized critical habitat. The proposed site will be compatible with and is compatible with the forest usage.

2. The proposed use does not interfere seriously with accepted forestry practice on adjacent land devoted to forest use. The subject area contains no commercial timber species. The forest uses in the area are generally cattle grazing and the forestry practices call for the movement of cattle from range to range as the food sources are depleted. The proposed use will not interfere at all with those practices.

3. The proposed use will not materially alter the stability of over all land use patterns in the area. The Applicant will not be partitioning or otherwise isolating the parcel of land upon which the aggregate site is located from the balance of its ranching operation. This permit will not create any new parcels or any new land uses as the Applicant has used the Poe Valley site for its own purposes for at least nine years. There is no evidence in the record whatsoever indicating that the proposed use will in any way alter the stability of the land use pattern of the area.

4. The proposed site is on land that is generally unsuitable for the protection of forest crops and livestock. The proposed site is approximately one acre in size. Gravel and rock are exposed on the surface of the land and it does not support any vegetative cover. The site is located on a gently sloping hill and there is no indication of any adverse soil, drainage or flooding problems which would adversely affect the site or any of the surrounding land. The site is isolated and located approximately  $1\frac{1}{2}$  miles from the nearest residence and is suited for the proposed purpose.

5. The proposed site is not in a wildfire hazard area and an adequate water supply is available to the property. Access to the property is provided by dreed access owned and maintained by the Applicant and by Dodds Hoolow Road. Dodds Hollow Road is of adequately sized to carry the additional traffic (approximately one tract per hour) that his use will generate.

6. As pointed out above under the Land Developemnt Code Criteria, the proposed use as a mineral extraction site is conditionally permitted in the forest/range zone. The location, size, design and operating characteristics of the proposed use are in conformance with the Klamath County Comprehensive Plan. The proposed use is small in scale and involves minimal onsite processing. The equipment used on site is primarily farm equipment that is used in other parts

of the Applicant's ranching operations. The rock removed from the site will be used on neighboring farming operations. As the land involved has little resource value except as a mineral extraction site the proposed use represents a good balance of the competing policies contained in Klamath County Comprehensive Land Use Plan.

7. The location, size, design and operating characteristics of the proposed development will be compatible with and will have no significant adverse effect on the appropriate development and use of abutting properties or surrounding neighborhood. The proposed use is compatible with the existing agricultural operation. The Applicant has operated the Poe Valley site for nine years for its own use with the same equipment which will be used at the site as rock is sold to neighboring land owners. The site is small, not more than one acre, and not more than 5,000 cubic yards of material per year will be removed from the site. The site will use private roads for access to Dodds Hollow Road which is a County maintained and road. The Applicant's 5,000 acre ranch surrounds the proposed site. The site is a significant distance from neighboring properties and other land uses. By applying reasonable standards to the control of dust at the site and on the access road the proposed use will be compatible with the existing and appropriate uses in the neighborhood.

8. As the proposed site is less than one acre in size and not more than 5,000 cubic yards of material per year will be removed from the proposed site there are no state or federal regulations or statutes which apply to this operation. Consistent with its past practice the County will impose its own reclamation standards which are required herein below.

9. At the proposed volume, the access road which serves the proposed site can accommodate the approximate 3 to 10 additional round trips per day during the months in which operation is expected. The Applicant's private road and

the connecting County roads are adequate to handle the small additional volume of traffic that will be generated by the proposed use.

10. There will be no blasting involved with the extraction of the gravel from this site. The aggregate is loose and will be scooped up with a tractor and poured into the Applicant's crushing machine.

E.

ORDER AND CONDITIONS

The Applicant's request for a Conditional Use Permit to operate a mineral extraction site at the Dodds Hollow site described hereinabove is hereby approved, subject to the following conditions:

1. Prior to providing any aggregate other than for use on Applicants property, the Applicant shall provide to the Klamath County Planning Director for his review and approval a reclamation plan for the site which said plan will insure that during the Applicant's use of the site and at such time the site has been fully mined the site will not create an unreasonable danger to people or wildlife;

2. This permit shall be for a period of three years and shall terminate on June 30, 1992;

3. The Applicant shall maintain a log showing the dates and times of operation of machinery and equipment at the site and the number of truck trips and quantity of material removed from the site during the period of this permit. Said log shall be available upon 24 hours notice for inspection and review by the Klamath County Planning Director or his designee. The log shall be delivered to the Planning Director and made a part of the Planning Department file concerning this matter on an annual basis;

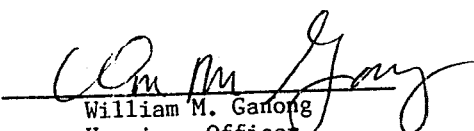
4. No blasting shall be used in removing aggregate from the subject site. At no time shall the site exceed one acre in size and no more than 5,000 cubic

yards of material shall be removed from the site in any 12 month period. No more than 80 cubic yards of material shall be removed from the site in any 24 hour period;

5. The Applicant shall apply water or other dust control measures so that an unreasonable amount of dust will not be generated by the project; and

6. The Applicant shall not use the site from November 15 to March 15 of each year.

DATED this 13 day of June, 1989.

  
William M. Garfong  
Hearings Officer

Klamath County Land Development Code Section 24.007 provides:

"An Order of the Hearings Officer shall be final unless appealed within ten (10) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of this Code."

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 29th day  
of June A.D., 19 89 at 10:06 o'clock A.M., and duly recorded in Vol. M89  
of Deeds on Page 11656.

Evelyn Biehn County Clerk  
By Pauline M. Mendenhall

FEE none

Return: Commissioners Journal