

## BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request	)	C.U.P. 13-89
for a Conditional Use Permit	)	FINDINGS OF FACT, CONCLUSIONS
for J. C. COMPTON CONTRACTOR,	)	OF LAW AND ORDER
INC.	)	

This matter came before Hearings Officer William M. Ganong on April 20, 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 Applicant was represented by William Steers, Jr. of Gilchrist Timber Company and Robert Price of David Evans and Associates, Inc., Planners for Applicant J. C. Compton Contractors, Inc. The Klamath County Planning Department was represented by Mr. J. Kim Lundahl and the Recording Secretary was Karen Burg. 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. J. C. Compton Contractor, Inc. has applied for a Conditional Use Permit to operate a commercial rock quarry and portable asphalt batch plant on a portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 20, Township 24S, Range 8E of the W.M., Klamath County, Oregon, containing approximately 10 acres of land. The site is located approximately six miles west of the towns of Gilchrist and Crescent in Northern Klamath County.

2. The land is owned by Gilchrist Timber Company and has been leased to J. C. Compton Contractor, Inc. for said purpose.

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3. The Applicant estimates that there are approximately 6.5 million cubic yards of high quality rock on the site. The site is located at the base of Black Rock Butte a cinder cone typical of this area.

4. The site which will be mined is devoid of vegetation and is composed of rock. It lies within a private and publicly owned commercial forest. The fringe area of the subject site contains Class 4 and 5 forest soils. The Class 5 lands are forested primarily with lodgepole pine and the Class 4 lands primarily with ponderosa pine. As with much of Northern Klamath County and Southern Deshutes County, this area has suffered a severe infestation of pine beetle and much of the land is being logged to remove dead trees.

5. The proposed operation will meet all DEQ requirements and standards for air quality and will be subject to standards and inspections by DEQ and DOGAMI, including the filing and bonding of a DOGAMI Reclamation Plan.

6. The Applicant contacted ODFW and U.S. Forest Service, which submitted letters indicating no anticipated adverse impacts on the resources managed by those agencies from the proposed use. In addition, William Speers testified that the proposed use would be compatible with Gilchrist Timber Company's commercial forestry practices which currently are reforestation practices being utilized following the removal of the dead timber.

7. Aggregate from this site will be available for use by Gilchrist Timber Company and other resource managers for maintaining their private forest roads systems.

8. The subject site is over  $1\frac{1}{2}$  miles from the nearest residence. The topography and vegetation in the area will mitigate and eliminate any noise from the site which might otherwise adversely affect said residents. There is no other development in this area. The soils in the area, apart from the rock

source itself, are primarily pumice soils which have high absorption rates. Therefore, there should be little or no drainage or runoff from the proposed site. If, in fact, there is any problem with drainage the Applicant shall install cutoff ditches and other drainage structures as may be necessary.

9. The subject site is served by Crescent Road, a public road, and by a privately owned road. Traffic generated by the site can be safely accommodated by the existing road system.

10. Fire protection in this area is provided by the Oregon Department of Forestry and through mutual aid agreements with the Rural Fire Protection and State Fire Protection authorities. The Applicant will have on site a 4,000 gallon water tanker and personnel who could be used to fight forest fires. In addition, the Applicant will have a caterpillar tractor and other heavy equipment on site which will be valuable in stopping any fire originating at the site and also in fighting any wildfire in the nearby area.

11. The Applicant intends to employ dust abatement procedures including the spraying of roads and the washing of material as they go through the crushing equipment. The portable batch plant which will be located on site also has an emission scrubber which should eliminate any adverse emission from the batch plant. The Applicant intends to operate the site eighty hours a week and between 6 a.m. and 10 p.m., Monday through Friday, as required by its contracts.

12. The site is within a summer deer range. However, the biologist for ODFW predicts no adverse impact from the purposed use. The nearest surface water is located several miles from the purposed site and there should be no disturbance of fish or wildlife in the area other than a slight disturbance



caused by the noise generated by the site. However, as the site and Black Rock Butte are devoid of vegetation this area is not a high quality wildlife area.

13. Studies conducted by the Applicant indicate that the material that it will be mining will meet Federal and State Standards for base rock and paving material. The only other mineral extraction site in this area is a similar operation, operated by a competing company on Black Rock Butte. The subject property is zoned F-Forestry.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA:

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

A. KCLDC Section 51.020(D)(1) allows mineral and aggregate exploration and extraction in the forestry zone;

B. KCLDC Section 51.020 (E) sets forth the criteria which must be considered in granting a Conditional Use Permit on forest land;

C. KCLDC Section 44.003 sets forth the criteria for reviewing applications generally; and

D. KCLDC Sections 81.001.004 set forth the standards and criteria for reviewing an application for the operation of mineral and aggregate extraction site. (Klamath County adopted changes to KCLDC Article 81 on May 23, 1989. Klamath County legal counsel 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.)

KLAMATH COUNTY LAND USE PLANS, GOALS AND POLICIES:

This application is subject to the Land Use Policies set forth under Goals 4-Forest Land and Goal 5-Natural Resources.

The policies provided under Goal 4-Forest Land are intended to perserve forest land for forest uses. The forest uses employed on the subject property and surrounding property are primarily commerical timber production and marginal wildlife habitat.

The policies provided under Goal 5-Natural Resources are intended to identify and protect significant natural resources. Included in the resources which this goal is intended to protect are mineral and aggregate resource sites. At the time the County adopted its Comprehensive Plan it had not undertaken a comprehensive inventory of mineral resource sites. Therefore, very few sites are protected by the Goal 5 overlay zone. Policies 23, 24 and 25 under Goal 5, recognize the need to preserve and protect mineral extraction sites for current use and future use.

The 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 conclusions made herein below.

Other policies of the Klamath County Comprehensive Plan which apply to this application have been implemented through zoning and property development standards and review criteria which will be discussed herein below.

CRITERIA FINDINGS OF FACT AND CONCLUSIONS:

1. The Applicant's proposed use of this site as a mineral extraction and temporary processing site is conditionally allowed in the forest zone as described above.

2. The proposed use is compatible with forest uses. Information submitted by Gilchrist Timber Company and the Applicant's own Forester demonstrate that the forest resource value at the subject site is very small.

William Steers testified that the proposed use will be compatible with Gilchrist Timber Company's commercial forestry practices located on the subject land and surrounding lands owned by Gilchrist Timber Company. The proposed use will supply crushed rock for use on Gilchrist Timber Company roads and other commercial forest roads in the general area.

3. The proposed use will not interfere with the accepted forestry practices on adjacent lands devoted to forest uses and will not have any significant impact on the costs of said forestry operations. No evidence was submitted into by either public or private resource managers that the proposed operation would have any adverse effect on the forestry practices on the subject land and adjacent lands nor is there any testimony that this use will increase the cost of forestry operations. The contrary is true. This proposed use will make available road materials which are currently available from only one other source. Competition should moderate the price of aggregate and the close location of this site to commercial forest needs will reduce transportation costs for those material. Public and private resource managers foresee no adverse affect of this use on their forest practices or the costs of those practices.

4. The proposed use will not materially alter the stability of the overall land use pattern in the area. The land use pattern in the area consists almost exclusively of commercial timber operations. The proposed use is a temporary use. The lease between Gilchrist Timber Company and the Applicant provides an initial term of five years and one option to extend the lease for an additional five years. When the extraction operation has been completed the entire area will be reclaimed as required by state laws and administrative rules and will be susceptible to cultivation of trees.



5. The subject site is located on land that is generally unsuitable for the production of forest crops and livestock. The property consists primarily of exposed aggregate and rock that is devoid of vegetation. Said land has little or no forestry resource value although it may have some value when the aggregate has been removed and existing soils have been uncovered. The site should experience no drainage or flooding problems and is ideally suited for the proposed use.

6. The use of the property for mineral extraction minimizes the loss of productive forest lands. The subject site has no timber production capability. The fringe area of the site consists of Class 4 and 5 timber soils which are suitable for ponderosa pine and lodgepole pine trees. However, many of trees of the area have been killed by the pine beetle infestation which swept Northern Klamath County and the proposed temporary use of this site will not take productive forest land out of forest use. As the land is mined and reclaimed it will be planted pursuant to the reclamation plan. The proposed extraction site and processing plant are limited to the poor soil area described above.

7. The proposed use will meet the standards relating to the availability of fire protection in Article 69 of the Land Use Code. Fire protection will be supplied by the Oregon State Department of Forestry. However, as noted above the Applicant will have significant fire suppression capability, with men, water and machinery available on site. The only other rural service which will be use by this site is the public road system which provides access to the private road on the site. However, testimony in the record demonstrates that the number of trips per day generated by this use will not tax the available

road system and the proposed use will in fact enhance the road system by making available aggregate for road maintenance.

8. The proposed use will be subject to strict DEQ and DOGAMI regulations. As the proposed site is ideally situated for the proposed use it is not necessary to imposed any standards or conditions in addition to those already contained in the Land Use, Heath and Building Codes and the State Regulations and Laws.

9. The site will be used for mineral extraction on a temporary basis and only until such time as the resource is depleted or the lease between the parties expires, which will be not more than 10 years.

10. The site will be operated in accordance with applicable State standards and requirements. The Applicant is an established contractor with vast experience in aggregate exploration, extraction and applications. The Applicant has applied for all required permits and has filed the plans required by the DEQ and DOGAMI.

11. There is adequate access provided by public and public roads to the proposed site. The volume of traffic estimated by the Applicant and evidence contained in the Applicant's written submittal demonstrates that the traffic generated by this use can be accomodated on the existing roads.

12. The evidence submitted by the Applicant demonstrates that there will be no significant endangerment of public health, safety or welfare resulting from the increased traffic flow. The private road which accesses the site has turnouts and adequate visibility to safety allow two-way traffic. The Public road is a two lane road and connects with U.S. Highway 97, a major interstate highway. The intersections of said roads have in excess of 700 feet of visibility both directions and can safely accomodate the access of vehicles



from the site on to the roads and the additional traffic created by those vehicles.

13. The Applicant will provide water to the site with a 4,000 tanker truck. The Applicant will also have a settling pond on the site and water is available from sources within two miles of the site. There is adequate water available to the site to adequately control dust and other emissions from the proposed use.

14. The Applicant expects that any blasting involved in the operation will be very minimal. The resource includes deep fractures and the Applicant believes that the aggregate can be removed by a large caterpillar tractor using a ripper and that blasting normally will not be necessary.


15. Klamath County Planning Department Staff has reviewed the subject application and believes that the site, location, size, design and operating characteristics are in conformance with the Klamath County Comprehensive Plan. The detailed findings and conclusions set forth hereinabove demonstrate that in fact this application is in conformance with the Comprehensive Plan. It represents a good balance of the competing policies of Goals 4 and 5 and results in an appropriate use of this land which will be compatible with and beneficial to the forest uses on the surrounding land. The site is isolated from other land uses which would conflict with the proposed use.

16. The location, size, design and operating characteristics of the proposed development will be compatible with and will not have significant adverse effect on the appropriate development and use of the abutting properties in the surrounding neighborhoods. This conclusion is supported by the findings set forth above which not need be reiterated.

ORDER

J. C. Compton Contractor, Inc. is granted a Conditional Use Permit to operate a mineral extraction and processing plant composed of crushing and screening equipment and an asphalt batch plant on the land described herein above. The Applicant shall comply at all times with all Federal, State and County laws, regulations, rules and requirements.

DATED this 21th day of June, 1989.

  
 William M. Ganong  
 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 the Code."

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 8th day  
 of Aug. A.D., 19 89 at 4:45 o'clock P.M., and duly recorded in Vol. M89  
 of Deeds on Page 14686

FEE none

Evelyn Biehn  
 By  County Clerk

Return: Commissioners Journal