

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGONIN THE MATTER OF CUP 10-90 FOR
WEYERHAEUSER COMPANY TO ESTABLISH A MINERAL
EXTRACTION SITE IN THE FORESTRY ZONE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish a mineral extraction site not in conjunction with forest use on 10,000 acres m/l west of Klamath Falls.

The request was heard by the Hearings Officer April 20, 1990 pursuant to Ordinances 44 and 45. The request was reviewed for conformance with Land Development Code Section 51.020 E.

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Richard C. Whitlock. The applicant appeared represented by Dennis Brandt, Woods Engineer, and offered testimony in support of the application. Francis Roberts, Assistant Director of Public Works for Klamath County also testified in favor of the application. The Planning Department was represented by Kim Lundahl, Senior Planner. The recording secretary was Leanne Mitchel, Administrative Secretary.

3. LEGAL DESCRIPTION:

The subject property is a 50 acre portion of a 10,000 acre property located in the E 1/2 Section 11 T 39S R 6E W.M.. Generally located southwest of the Keno Access Road, four miles northwest of the Greensprings Highway.

4. RELEVANT FACTS:

A. ACCESS: The property is adjacent to the Spencer Creek Cutoff, a paved maintained road.

B. FIRE PROTECTION: The property is within the jurisdiction of the Depart-

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ment of Forestry which provides wildland fire protection to the Weyco Tree Farm. Weyco also maintains an initial fire response team based at the millsite west of the Klamath River at Klamath Falls. On-site fire protection will be provided during the quarry operating seasons.

C. LAND USE: The property is a parcel of approximately 50 acres of undeveloped land. The site was logged long ago and has very little second volunteer growth. The adjacent lands to the north, south and east and west are found devoted to forestry uses.

The Weyco Tree Farm surrounds the project site for several miles, at least, in each compass direction.

D. SLOPE: Available topographic mapping and areial photos are included in the Staff Report package as exhibits b-f. Completion of the project, 700,000 cu. yds., will result in an effectively flat area of 48 acres.

E. PLAN/ZONING: The plan/zone designation of the project site and properties to the north, south, east and west is Forestry/Forestry.

5. RELEVANT CRITERIA:

The standards and criteria relevant to this application are found in the Klamath County Comprehensive Plan (Goal 4) and the Klamath County Land Development Code, specifically Section 51.020.

6. FINDINGS:

All evidence submitted as the staff report, exhibits b-f, and offered testimony were considered in this Order.

6.1 Goal Findings: With regard to the Statewide Planning Goals and the Klamath County Comprehensive Plan, the Hearings Officer makes the following findings:

A. The goal of the Forest Lands Element is to conserve forest lands for the

production of wood fiber and other forest uses, protect forest lands from incompatible uses, and to ensure a continued yield of forest products and values.

B. Forest Uses are defined by Statewide Planning Goal 4 and the Comprehensive Plan to include:

1. The production of trees and forest products;
2. watershed protection and wildlife and fisheries habitat;
3. soil protection from wind and water;
4. grazing of livestock;
5. maintenance of clean air and water;
6. outdoor recreational activities
7. open space, buffers from noise, and visual separation of conflicting uses.

FINDING: The Hearings Officer finds that mineral extraction sites are not included in the list of forest uses. The Land Development Code does, however, permit mineral extraction sites subject to conditional use findings that the site is located on lands generally unsuitable for timber management and not needed for other permitted forest uses and is otherwise consistent with the County's acknowledged criteria.

C. Policy 4 of the Klamath County Forest Lands Goal states "The County shall regulate development of nonforest uses in forest areas". The "rationale" for such policy is "to protect the health, safety and welfare of County Citizens" and "to reduce fire danger to man-made structures and forest resources".

FINDING: The Hearings Officer finds that active forest management has oc-

curred on properties directly adjacent to the property. With the development of fuelbreaks and the readily available on and off site fire protection, there is an insignificant risk of fire.

6.2 Land Development Code Findings: With regard to the Klamath County Land Development Code, the Hearings Officer makes the following findings:

A. Klamath County Land Development Code Section 44.003-Conditional Use Permit Criteria:

A Conditional Use Permit shall be granted only if the reviewing authority shall find that it satisfies the following criteria, as well as other criteria and standards of this Code and other applicable codes and ordinances

44.003 A: "That the use is conditionally permitted in the zone in which it is proposed to be located."

FINDING: Section 51.020 D 1 identifies commercial mineral and aggregate extraction sites as a nonforest conditional use.

44.003 B: "That the location, size, design, and operating characteristics of the proposed use are in conformance with the Klamath County Comprehensive Plan".

Goal 4, Policy #1 states: The following lands shall be designated forestry and subject to the regulations of the Forestry and Forestry/Range zones contained in the Land Development Code:

1. Public or private industry forest lands located contiguously in large blocks, i. e. Forest Service, BLM, Weyerhaeuser, Gilchrist Timber;
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 or recreation;
6. Other lands needed to protect farm or forest uses on surrounding designated agricultural or forest lands.

Rationale: To preserve the maximum area of productive forest land.

FINDING: The area surrounding the subject property is in forestry use and the site presents no significant resource for wildlife or fisheries habitat nor watershed protection or recreation values.

FINDING: The subject property has a Timber Site Class Rating of 6, thereby meeting the definition of forest land. However, the site chosen for the site is clearly not in forest production and testimony clearly indicates tree production is negligible due to the shallow soils and rocky outcrop.

FINDING: The small site to be diverted from forest uses is not large enough for legitimate forestry use and presently has no significant second growth. All but 20 acres will ultimately be returned to the marginal production of which the area is capable.

Goal 4, Policy #4 states: "The County shall regulate development of nonforest uses in forested areas".

Rationale: To protect the health, safety, and welfare of county citizens. And to reduce the fire danger to man-made structures and forest resources.

FINDING: The proposed quarry is within an established wildland fire protection district and the applicant provides an initial response team and on-site fire protection facilities. Access to the property to fight fire is excellent, being only a few hundred feet off a paved road. Further, the applicant has agreed to required fuelbreaks around the site to prevent the spread of fire to the adjacent resource properties, also under the ownership of the applicant.

44.003 C: "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. Consideration shall be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effects, if any, upon desirable neighborhood characteristics and livability; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development".

FINDING: Access to the proposal is provided via the Keno Access road and other Weyco access roads, which are all weather access roads. The roads provide access for the proposal and is utilized by commercial timber operators and for other forestry uses.

FINDING: The applicant will provide on and off-site fire protection with back-up from the Department of Forestry, which maintains a station 15 miles to the east. The site will not significantly increase the risk of wildfire impacts to nearby forest land or increase the danger to firefighters.

B. Klamath County Land Development Code Section 51.020 E - Non Forest Conditional Use Permit Criteria:

The uses conditionally permitted shall be subject to review in accordance with the following criteria:

1. The proposal is compatible with forest uses;

FINDING: The mineral to be extracted is a "hard rock" resource to be used on forestry roads as well as for commercial sale for State, County and private uses. The operation will compliment forestry operations by providing a much needed material for concrete and other surfacing uses.

2. The proposal does not interfere seriously with the accepted forestry practices on adjacent lands devoted to forestry use, and does not significantly increase the cost of forestry operations on such lands;

FINDING: The adjacent lands, owned by the applicant, are found devoted to forestry uses as set out in state and local goals. The Hearings Officer finds the costs of managing the Weyco Tree Farm will not be negatively affected. Road surface material for use on the Tree Farm will be produced by this facility.

3. The project will not materially alter the stability of the overall land use of the area;

FINDING: The Tree Farm has been owned by the applicant since the 1920s. The size of the project site, 50 acres, versus the applicant's contiguous holding, 10000 acres, is found to mitigate any destabilizing effect the project may have.

4. The proposal is located on generally unsuitable land for the production of forest products and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract;

FINDING: The project is on a parcel, 50.0 acres, too small to be considered for commercial forest uses. The site has been found to be a good source of "hardrock" and a poor medium for the production of trees. The Hearings Officer finds that due to the limited availability of "hardrock" resources, the use of the property for a quarry activity outweighs its use for tree production. The Hearings Officer finds that other forest uses as set out in the Goal will not be compromised by this activity.

5. The proposal considers site productivity, minimizes the loss of produc-

tive forest lands; and is limited to the area suitable and appropriate to the needs of the proposed use;

FINDING: The planned size, shape, and reclamation of the area will minimize the long term loss of productive lands. The site productivity lost over the lifetime of the quarry would be 800 c.c.f. The Hearings Officer finds the commercial Forestry land base of the County will not be compromised by the permitting of a nonforest mineral extraction site on 50 acres.

6. The proposal meets the standards set forth relating to the availability of fire protection and other rural services and will not tax those services;

FINDING: Wildland fire protection is provided by the applicant and the Dept. of Forestry. Access exists from the Cutoff Rd., a paved all weather access road.

7. ORDER:

Therefore, it is ordered the request of Weyerhaeuser Company for C.U.P. 10-90 is approved subject to the following conditions:

1. The applicant will file proof of clearance to operate from the Oregon Department of Geology and Mineral Industries and will comply with all development and reclamation conditions imposed by such agency.
2. The applicant must comply with the fire safety and other siting standards of the land use code.

8682

DATED this 7th day of May, 1990

Richard C. Whitlock
 Richard C. Whitlock, Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified that this decision may be appealed to the Klamath County Board of Commissioners by filing with the Planning Department a NOTICE OF APPEAL as set out in Section 33.004 of the Code, together with the required fee within TEN DAYS of the date of mailing of this decision. Appeals must be received by the Planning Department no later than 5:00 P.M. on the tenth day or next business day if the tenth day falls on a weekend or holiday. Failure to file a NOTICE OF APPEAL within the time provided will result in the loss of your right to appeal this decision.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 8th day
 of May A.D., 19 90 at 10:12 o'clock A M., and duly recorded in Vol. M90,
 of Deeds on Page 8674.
 Evelyn Biehn County Clerk
 By Debbie Muehlbauer

FEE none

Return: Commissioners Journal