

BEFORE THE HEARINGS OFFICER, KLAMATH COUNTY, OREGON

In the Matter of CUP 12-91 for)	TO ESTABLISH A MINERAL
)	EXTRACTION SITE IN A FARM USE
ROD and MARIE LYON)	ZONE (EFU-G)
)	

1. Nature of the Request. Applicants wish to establish a mineral extraction site not in conjunction with farm use on approximately 90 acres of land located in the northwest corner of the intersection between Brown Road and Westside Road approximately 10 miles south of Fort Klamath, Klamath County, Oregon on land zoned agriculture (EFU-G). The request was heard by the hearings officer April 5, 1991 pursuant to Klamath County Ordinance 45.17; under the provisions set forth in LDC 24.010 and evaluated for compliance under LDC 54.030 and under the procedures of LDC 24.010 et. sec.

2. Names of Those Who Participated. The hearings officer in review of this application was Neil D. Smith. The applicant appeared personally through Rodney R. Lyon and by Bradford J. Aspell of Aspell, Della-Rose & Richard, his attorneys. The Planning Department was represented by Kim Lundahl, Senior Planner. The Recording Secretary was Karen Burg. Those who testified in regard to this application were Carrie Mosier of the Klamath Ranger District, Winema National Forest, who expressed concern that the extraction site not be developed in such a way to be visible from the Westside Road; Daniel G. Brown, an owner of an existing gravel extraction site on adjoining property who expressed concerns regarding contamination of streams and oil spills; Vern Keefer, the manager of the Whitlatch Pit who expressed similar concerns; Keith Hamilton of Jefferson State Rock who expressed concern that the aggregate in the Daniel Brown pit not be contaminated by asphalt and F. J. Danforth, an adjacent property owner who described the diversion ditches off of Cherry Creek, which passed through the property, explained that no water rights existed on the property for mineral extraction and expressed concern that either the availability of water or its quality not be impacted from the operation. Additionally, written evidence was adduced. A letter from the Oregon Department of Geology and Mineral Industries, Exhibit D, explaining the reclamation permit process was entered as was a letter from Klamath County Planning Department Associate Planner Linda Lange, who advised that the site would be placed upon the mineral and aggregate inventory list, Exhibit E. In support of their testimony Exhibit G was received from Daniel G. Brown and Exhibit H & I were admitted from Mr. Danforth.

3. Legal Description. The property is an approximate 9 acre trapezoid located to the east of Westside Road to the north of its intersection with Brown Road consisting of the NE 1/4 SW

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1/4 and that portion of the N 1/2 NW 1/4 SW 1/4 and the S 1/2 NW 1/4, lying east of Westside Road, all in Section 23, Township 34 south, Range 6 EWM, Klamath County, Oregon. The tax account number is 3406 2300 500.

4. Relevant Facts.

A. Access. Property lies to the east of Westside Road, a paved major arterial which connects Ft. Klamath and Rocky Point. A County maintained paved road, Brown Road, extends from Westside Road and provides all weather access to the subject site.

B. Fire Protection/Utilities. The property is located within the Harriman Rural Fire Protection District. The electricity is provided by Pacific Power and Light Company. The telephone service is provided by Telephone Utilities of Oregon, Inc..

C. Land Use. The subject parcel consists of native grasses for seasonal nonintensive grazing. Near Westside Road the property consists of scattered Ponderosa and Jack pine, native deciduous trees and shrubs and native grasses. The eastern most portion is covered by thin pasture grass. This property on the west of Westside Road is generally owned by the United States Forest Service and private forest lands. The lands to the north and south of the subject site are zoned EFU-G. Lands to the immediate east of the subject site are also zoned EFU-G and generally consist of large acreages. To the immediate east of the location is the Jerry Whitlatch Rock Extraction Pit, which is presently being operated by Klamath Pacific Corporation. Immediately to the south across Brown Road is the Francis Brown Pit owned by Mary Jane Danforth which is operated by Jefferson State Rock. To the southeastern corner of the property is a 9.39 homesite owned by J. F. Leach. The property is recognized as a mineral extraction site and is in the process of being added to the Goal 5 mineral aggregate inventory maintained by Klamath County.

D. Sewage. Sewage on the site would be by individual septic systems. As applicants' intended use does not contemplate subsurface sewage, no further investigation, nor specific site evaluation has been made.

E. Slope. Available topographic mapping site inspection indicates slopes of 0 to 10 degrees running in generally a southeastern direction with the majority of the easterly parcel being generally level.

F. Soils. Available mapping and siting indicates a land capacity classification of class 5 and 6 soils and timber site productivity rating of class 5. The soils are underlaid by a substantial quantity of gravel and aggregates.

G. Water. The property is bisected by tributaries of Cherry Creek, notably Rose Ditch, southfork Cherry Creek Channel and the abandoned Morrison Ditch. Each of these ditches provides seasonal irrigation. The plan zone designation of the project site is agriculture (EFU-G) as well as to the north, east, and

south, and forestry (F) to the west. The property abuts a parcel to the south and to the east with identified mineral extraction reserves on the Goal 5 inventory and is in the process of being added to the the Goal 5 mineral and aggregate inventory prepared by Klamath County (EXF 5 relevant criteria).

The standards and criteria relevant to this application are found in the Klamath County Comprehensive Plan (Goal 5) and in the Klamath County Land Development Code Article 54.010 et. sec.

6. Findings. All evidence submitted and written in testimonial form were considered in entering this order, including the staff report Exhibit A, applicants questionnaire; Exhibit B, photos; Exhibit C, Department of Geology and Mineral Industries response of March 18, 1991, Exhibit D; memo from Klamath County Planning Department of 4-5-91, Exhibit E; Exhibit F, Daniel Brown letter 4-5-91; Exhibit G, Danforth Exhibits; Exhibit H, and Cherry Creek diversion maps; and the testimony at hearing.

6.1 Goal findings. With regard to the statewide planning goals in the Klamath County Comprehensive Plan, the hearings officer makes the following findings:

A. The goal of this element is to preserve open space to protect natural and scenic resources in Klamath County. To do so, resources shall be inventoried including:

A. " Mineral and Aggregate Resources. When no conflicting uses for the resources have been identified, the resources shall be managed to preserve the original character. When conflicting uses have been identified the economic, social, and environmental energy consequences shall be determined, programs determined to achieve the goal of protecting natural and scenic resources."

B. The Klamath County Comprehensive Plan requires the inventory of significant resources:

2. POLICY: Inventories of significant resources shall be reviewed using the OAR 660-16-000 process for identifying the quantity, quality, and location of each site. When conflicting uses are identified, the economic, social, environmental, and energy consequences of the conflicting use shall be determined and the conflicting use shall be allowed, limited, or prohibited.

The hearings officer finds that the Klamath County Planning Department has contacted applicants to add the mineral site to

the Goal 5 Mineral and Aggregate Inventory. This policy has been met.

Development inconsistent with existing inventory shall be discouraged.

23. POLICY: Development shall be discouraged on or within an area affected or potentially affected by existing or potential mineral extraction sites.

24. POLICY: Uses shall be avoided that would supplant or conflict with the development and use of aggregate extraction sites.

25. POLICY: The County shall encourage the protection and conservation of gravel, cinder, and clay removal sites throughout the County.

The hearings officer finds that the application in question adjoins two major mineral extraction sites. From the application and testimony (a) it is apparent that the property constitutes a mineral reserve which should be placed upon the mineral and aggregate inventory of Goal 5, (b) that the intended use of the site does not include development which would potentially or adversely affect existing or potential mineral sites, and (c) that the intended permit will encourage protection and conservation. The hearings officer finds that the property should be designated under this significant resource overlay LDC Article 57.010, et. sec. and under LDC 57.020(1-C). The hearings officer further finds that the conflicting uses should be limited under LDC 57.040A and LDC 57.070A.

6.2 Code Findings. The hearings officer finds under LDC 54.030(f) conditional uses that the mining of aggregate and other mineral and subsurface resources inventoried in the comprehensive plan in excess of 1,000 cubic yards where the surface area is greater than one acre is conditionally permitted in the EFU-G zone. The hearings officer finds that the surface area of the site is greater than one acre. The site is in the process of being inventoried in hence that development of the site is conditionally permitted under the terms of the code.

6.3 Conditional Use Criteria. This application may be granted upon findings that the use complies with the five enumerated criteria set forth at LDC 54.040A.

The use must comply with policies of the comprehensive plan. As discussed above, the comprehensive plan recognizes the need to inventory existing mineral resource sites to identify conflicting uses not only to minimize the conflict upon other lawfully permitted uses, but to limit the development on or surrounding

the property which would conflict with mineral extraction. Extraction sites should be inventoried in the Comprehensive Plan and periodically updated. The hearings officer finds it is part of the ongoing planning process. The subject property is being added to the mineral and aggregate inventory of Klamath County. The hearings officer further finds that from the testimony there was no evidence or testimony suggesting that the use of the mineral extraction site would have adverse impact upon the use of other adjoining properties but that the only concerns expressed was to a visual screening of the property from the highway to the use of water from the tributaries of Cherry Creek and to possible soil contamination through the extraction process. As to the first issue, the applicants testified that they will not be developing the property nearest Westside Road and that the trees and visual barriers shall remain; that applicant recognizes that it is right to use water from the tributaries of Cherry Creek governing by the laws and regulations of the water resources department including any right of appropriation therefrom; that it would have not right to discharge waste into the waters without obtaining a discharge permit from the Oregon Department of Environmental Quality, and has assured the hearings officer of no intention to cause pollution of the soil or ground waters. Accordingly, the hearings officer concludes that the policies of the Klamath County Comprehensive Plan have been complied with.

B. The use must be in conformance with all the other required standards and criteria of the code. The use is conditionally permitted in the EFU-Z zone. Klamath County Planning Department has initiated the addition of the property to the mineral and aggregated inventory of Klamath County. Nothing within the intended use is a conflicting use as defined by the significant resource overlay zone LDC 57.040A. The hearings officer further finds by contact of the Oregon Department of Geology and Mineral Industries that the appropriate resource management agencies has been contacted regarding development of this extraction site. Accordingly, the hearing officer concludes that this application is in conformance with all the other required standards and criteria of this code.

C. The location site, design and operating characteristics of the proposed use must not have a significant adverse impact upon the liveability, value or appropriate development of abutting properties in the surrounding area. Property directly to the west and across Westside Road is zoned forestry (F) devoted primarily to the timber production harvesting and related uses. The hearings officer finds that properties to the west and south similarly have been developed as mineral extraction sites and contain a minimum of two working mineral extraction sites. The hearings officer finds that with the imposition of conditions:

- i. Requiring the protection of the vegetation and trees on the property abutting Westside Road.
- ii. Requiring that applicant comply with the rules of the Department of Geology and Mineral Industries, the Water Resources Department and DEQ.

That the granting of this conditional use permit will not have significant adverse impact upon the value or appropriate development of abutting properties. Based upon the lack of testimony concerning the impact upon the liveability to the adjacent properties, the hearings officer concluded there will be no significant adverse impact upon liveability as well.

D. The use must not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use. The hearings officer finds that the parcel in question is sufficiently removed from existing forestry lands such that it will not force a change in accepted forest practices. Similarly, as the land to the east and south has been devoted to mineral extraction activities, the granting of this permit will not force significant change in accepted farm use.

E. The use must not significantly increase the cost of accepted farm or forest practices on surrounding land devoted to farm or forest use. The hearings officer is unable to identify any potential increased cost engaging in accepted farm or forest practices on surrounding lands. Accordingly, the hearings officer finds that this condition has been met.

THEREFORE, IT IS HEREBY ORDERED that the conditional use permit request of RODNEY R. and MARIE LYON, for approval of conditional use permit 12-91 for approval of a mineral extraction site under LDC 54.030(F), of property described as portion NW 1/4 section 23, T 34S R 6E, T.A. 3406-23-500, is hereby approved subject to the following conditions:

A. That the applicant shall maintain a visual barrier of native fir, pine, deciduous trees and bushes between the proposed mineral extraction site and Westside Road.

B. That applicant shall provide relevant data to the Klamath County Planning Department to complete the addition of the property to the Goal 5 mineral and aggregate inventory.


C. That applicant shall comply with rules and regulations of the Oregon Department of Geology and Mineral Industries regarding the mineral extraction site.

D. That applicant shall comply with the rules of the Oregon

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Department of Environmental Quality and the Oregon Water Resource
Department regarding the use of and disposal of water from the
site.

DATED this 17th day of May, 1991.


NEIL D. SMITH
Hearings Officer

Notice of Appeal Rights.

You are hereby notified that this decision may be appealed
to the Klamath County Board of Commissioners for filing with the
Planning Department:

NOTICE OF APPEAL as set out in Section 33.004 of this Code,
together with the required fee within ~~10~~¹⁰ days (TEN DAYS) from the
date of mailing of this decision. Appeals must be received by
the Planning Department no later than 5:00 p.m. on the 10th day
or next business day if the 10th 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 20th day
of May A.D., 19 91 at 2:34 o'clock P.M., and duly recorded in Vol. M91
of Deeds on Page 9514.

FEE none

Evelyn Biehn - County Clerk

By Pauline Muehlendore

Return: Commissioners Journal