

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 48-91 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 2800 acres m/l south and east of Chemult.

The request was heard by the Hearings Officer August 9, 1991 pursuant to Ordinances 44 and 45. The request was reviewed for conformance with Land Development Code Article 55.

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Neil D. Smith. The applicant appeared represented by John Monfore, who offered testimony in support of the application. The Planning Department was represented by Kim Lundahl, Senior Planner.

3. LEGAL DESCRIPTION:

The subject property is a 2800 acre block of Weyco owned property south and east of Chemult. Located in portions sections 21, 28, 33 & 34 T 27S R 8E and portions sections 2, 4, 9 & 10 T 28S R 8E.

4. RELEVANT FACTS:

A. ACCESS: The property is accessed by the Weyco road network.

B. FIRE PROTECTION: The property is within the jurisdiction of the Department of Forestry and Walker Range Patrol 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 2800 acres of undeveloped land. The site is dominated by lodgepole pine in various blocks of even age from 1 to 100 years in age.

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

D. SLOPE: Available topographic mapping is included in the Staff Report package as exhibit b.

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 Article 55.

6. FINDINGS:

All evidence submitted as the staff report, exhibits b-c, 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 occurred 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 44.030-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

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

FINDING: Section 55.040 A identifies commercial mineral and aggregate extraction sites as a nonforest conditional use.

44.030 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 small 1/4 acre sites set for mining are clearly not in forest production and testimony clearly indicates tree production is negligible due to the shallow soils and rocky outcrop.

FINDING: The small sites to be diverted from forest uses are not large enough for legitimate forestry use and presently has no significant second growth. All 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 sites are 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.

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 existing Weyco road net, 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. The sites 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 55.040 - 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 "pumice" resource to be used for various commercial/industrial applications. The operation will compliment forestry operations by providing a much needed material.

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.

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 sites, 1/4 acre, versus the applicant's contiguous holding, 2800 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 sites, 1/4 acres, too small to be considered for commercial forest uses. The sites have been found to be a good source of "pumice" and a poor medium for the production of trees. The Hearings Officer finds that due to the limited availability of "pumice" 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 productive 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 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 1/4 acre sites.

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 through the Weyco roadnet, all weather access roads.

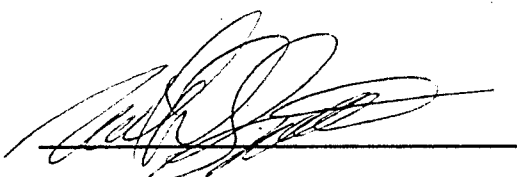
7. ORDER:

Therefore, it is ordered the request of Weyerhaeuser Company for C.U.P. 48-91 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.

DATED this 19 day of August, 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 by filing with the Planning Department a NOTICE OF APPEAL as set out in Article 33 of the Code, together with the required fee within SEVEN 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 seventh day or next business day if the seventh 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.

CUP 48-91 WEYCO

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 21st day of Aug. A.D., 19 91 at 11:04 o'clock A M., and duly recorded in Vol. M91 of Deeds on Page 16652.

FEE none

Evelyn Biehn County Clerk

By Dawn Mullins

Return: Commissioners Journal