

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 77-91/MNP 58-91 FOR
THE OREGON STATE HIGHWAY DIVISION

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish/separate existing uses, a mineral extraction site and stockpile site onto two parcels of 9.7 and 4.0 acres each.

The request was heard by the Hearings Officer December 6, 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 Nell D. Smith. The applicant appeared and offered testimony in support of the application. The Planning Department was represented by Kim Lundahl, Senior Planner. The recording secretary was Karen Burg. No opposition was offered this application.

3. LEGAL DESCRIPTION:

The subject property is a 13.7 acre property east of Hwy 62 (Crater Lake Hwy), 1/2 mile south of Weed Rd. It is located in the SE 1/4 section 12, T 34S R 71/2E.

4. RELEVANT FACTS:

A. ACCESS: The property is accessed by an existing improved/maintained state highway.

B. FIRE PROTECTION: The property is not within a structural fire protection district. The O.D.F. provides wildland fire protection to the proposal.

C. LAND USE: The proposed parcels are located on the east side of the Crater Lake Hwy. The long existing mineral extraction site (1938) was established for the construction of the Highway and has been an active site since. The surrounding area is devoted to permitted uses.

D. SLOPE: The property is level adjacent to the highway, however, the mineral extraction site is the face of a steep cliff.

E. PLAN/ZONING: The plan/zone designation of the project site and properties to the north, 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 and 45.

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 conditionally permitted uses in the Forestry zone. As the uses, a stockpile and mineral extraction site have been in continuous use for at least 15 years, the Hearings Officer finds these uses in conformance with LDC section 12.010 as previously existing uses.

Partitions creating parcels for non forest use are reviewed per the criteria set out in Article 55.090 of the Code.

The Hearings Officer finds this partition conforms to these criteria as set out below:

1. The parcels created for non forest use will be 9.7 and 4.0 acres in size.

The land is not devoted to Forest uses as it is a long existing legally sited mineral extraction site..

2. Access to the proposed parcels is via a maintained paved state highway (Hwy 62).

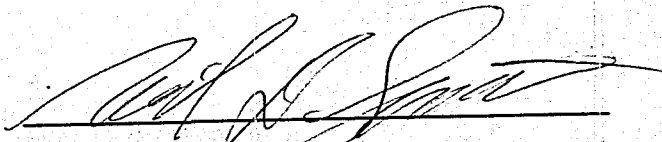
7. ORDER:

Therefore, it is ordered the request of the Oregon State Highway Division for CUP 77-91/MNP 58-91 is approved subject to the following conditions:

1. The applicant shall file a restrictive covenant with the County Clerk prohibiting the permit grantee and successors in interest from filing complaint concerning accepted resource management practices that may occur on nearby lands devoted to commercial resource use.
2. Partition 58-91 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing.

3. The applicant is required to confer with the Planning Department concerning entering the mineral extraction site within the Resource Inventory of Mineral Extraction Sites prior to the use of the site.

DATED this 9th day of ^{DEC}~~April~~, 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.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 10th day of Dec. A.D., 19 91 at 2:50 o'clock P.M., and duly recorded in Vol. M91, of Deeds on Page 25767.

FEE none

Evelyn Biehn - County Clerk

By Dorise Mullendore

Return: Commissioners Journal