

Vol. 195 Page
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COUNTY CLERKBEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF KLAMATH

In the Matter of the Appeal of the Site Plan)
Approval for) ORDER
)
)
OLD FORT SAND AND GRAVEL, INC.)
_____)

1. **NATURE OF THE APPLICATION:** The applicant has requested a Site Plan approval for the siting of a gravel operation by the Old Fort Sand and Gravel, Inc. company for the "Campbell Pit" located off Old Fort Road in Klamath County, Oregon. The Planning Director conducted a Type II Review and on February 6, 1995, approved the application. On February 13, 1995, an Appeal of that decision was filed by Bruce R. Wirth, Maxine L. Wirth and Meadow Lake Inc.

2. **NAMES OF THOSE INVOLVED;** A Hearing on this Appeal was conducted on March 16, 1995. The applicant was represented by its attorney, Michael L. Spencer, its President, John Bowers and its Chief Financial Officer, Perry Chestnut. The Planning Department was represented by Carl Shuck, Planning Director. Karen Burg was the Recording Secretary. Members of the Board of County Commissioners who participated in this Hearing were: C. H. McMillan III and David Henzel. The appellants were present. A number of witness testified and a notarized list of those who participated is on file at the Planning Department.

3. **SCOPE OF AND CRITERIA FOR REVIEW:** This was an appeal pursuant to Article 33 of the Klamath County Land Development Code (KCLDC). Since the original approval was based upon a Type II Review, no opportunity for a prior hearing was provided

and pursuant to Article 33.080, this hearing was *de novo*. Notice of the hearing was provided in accordance with Article 22 of the Code.

This application was reviewed pursuant to Article 41, Site Plan Review, and Article 81, Mineral and Aggregate Extraction Standards, the criteria of which are incorporated in this Order by reference.

4. FINDINGS OF FACT:

Testimony and evidence at the Hearing established that the "Campbell Pit" has been in operation in one form or another since the 1940's. The operation has had a Grant of Limited Exemption for the Department of Geology and Mineral Industries (DOGAMI) since 1975. The extent of the use of the permit has varied throughout the years but it has had some aggregate removed each of the years that are relevant to this consideration. The subject property has not been used for any purpose other than aggregate extraction for as long as anyone can remember.

Klamath County adopted its original Land Development Code on November 25, 1981 and this property and surrounding property was zoned R/L Low Density Residential. Since the 1940's there were a few homes located in the general area of the site, but further residential development has intensified in the last six (6) years.

The site is located on Parcel 3 of Land Partition 26-94 and consists of 148.7 acres in total. The Tax Lot Numbers are 3809-2200-801 and 3809-0000-5103. The use of the site for aggregate extraction is limited to that provided for in the DOGAMI Grant of Limited Exemption.

The applicant submitted copies of Grants of Limited Exemption for the site dated

continuously from 1975 until the present. The applicant also submitted a copy of a DEQ Air Contaminant Discharge Permit for its portable crusher, which is to be located on the site. The applicant also submitted a copy of a DEQ National Pollutant Discharge Elimination System Storm Discharge Permit.

The applicant submitted a site plan showing the location of aggregate extraction areas and its crushing operation. That plan shows that these operations will take place at least 300 feet from the nearest adjacent property line and this setback complies with the requirements of Article 62 and Article 81.

The Board finds that the site existed prior to the implementation of zoning regulations and that the site has been operated in the last calendar year and that the operator has a valid DOGAMI Grant of Limited Exemption issued prior to the effective date of the adoption of Article 81.

The opponents to this application raised concerns relating to noise, dust, traffic on Old Fort Road, impact on water systems and drainage. No concerns were raised relating to any of the Criteria found in Articles 41 and 81.

5. CONCLUSIONS OF LAW:

Pursuant to Article 81.020(B)(1) & (3), this preexisting aggregate operation is exempt from the requirements of Article 81. However, the Board concludes that this applicant has established compliance with all of the Criteria found in Article 81.050 in that it has established that it has provided screening to protect the visual quality of the area to the fullest extent possible; that it has all required Water Quality DEQ permits and will not cause a change in the location of any stream channel or wetland; that it has a valid DEQ air discharge permit and that

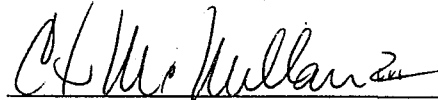
dust abatement will be conducted in accordance with DEQ standards; that it has a valid DOGAMI Grant of Limited Exemption; that it complies with all required operating setbacks; that its hours of operation will be within those provided for in Article 81; and that blasting, if any, will occur as restricted by the Code.

The Board further concludes that the application fully complies with all of the requirements for a site plan approval under Article 81.

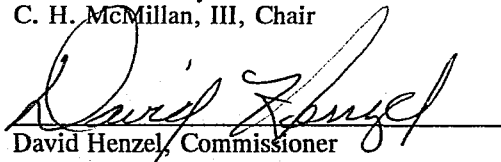
6. ORDER:

Based upon the findings of fact and conclusions of law contained herein, it is hereby ordered that the appeal of the approval by the Planning Director of the Site Plan application for Old Fort Sand and Gravel, Inc. for the "Campbell Pit" on Old Fort Road is denied.

DATED this 12th day of Apr, 1995.

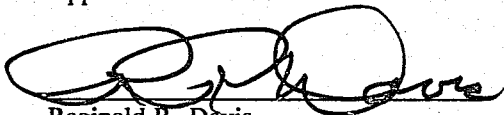


C. H. McMillan, III, Chair



David Henzel, Commissioner

Approved as to form:



Reginald R. Davis
County Counsel

NOTICE OF APPEAL RIGHTS

You are hereby notified that this decision may be appealed to the Land Use Board of Appeals within 21 days following the date of mailing of this ORDER. Contact the Land Use Board of Appeals for information as to how to file this appeal. Failure to do so in a timely manner may affect your right to appeal.

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 18th day of April A.D., 19 95 at 3:01 o'clock P M., and duly recorded in Vol. M95 of Deeds on Page 9739.

FEE none

RETURN: Commissioners Journal

By

Bernetha G. Letsch, County Clerk

