

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

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| In the matter of the request for a) | |
| Conditional Use Permit for) | CONDITIONAL USE PERMIT |
| | NO. 31-96 |
| ADKINS CONSULTING ENGINEERS) | |
| FOR PAUL BREITENSTEIN) | |
| _____) | |

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This matter came before Neal G. Buchanan, Deputy Hearings Officer for Klamath County, Oregon on May 3, 1996 in the Klamath County Museum Meeting Room in Klamath Falls, Oregon. The hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related statutes and ordinances. The Klamath County Planning Department was represented by Ms. Karen Burg who also served as the recording secretary. The Klamath County Planning Department file and all the exhibits and other contents therein is incorporated by this reference into this matter. The applicant was represented by Mr. Stewart Cleave. No objections were presented to the granting of the permit.

FINDINGS OF FACT

1. The applicant is requesting a Conditional Use Permit to allow mineral extraction/processing facility on 80 acres zoned FR. The property is located 2.5 miles west of Stewart-Lenox, south of Balsam Drive described as the SE 1/4 of the NE 1/4 and the NE 1/4 of the SE 1/4 of S10, T38S, R8EWM, TA 1300. The subject property is accessed from Balsam Drive. Adjacent property on three sides of the subject property is used for mineral extraction. The subject property is currently used as Forestry Range with farm deferral but will be removed from farm deferral and will be used to extract, crush and process aggregate

for commercial purposes. Temporary ACC and PCC batch plants and a mobile operations office will be added. The use will operate under a State of Oregon DOGAMI permit and the property will be reclaimed in compliance with DOGAMI regulations.

The subject property is within an acknowledged Goal 5-Overlay, Big Game Winter Range. The State of Oregon Department of Fish and Wildlife was notified of this application and is presumed to have reviewed it. No recommendations were received.

The Klamath County Land Development Code Articles 54 and 55 both allow the proposed use as a conditional use.

The location, size, design, and operating characteristics of the proposed use will not force a significant change in or significantly increase the cost of accepted farm or forestry practices on nearby lands.

The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

The site will be operated in accordance with applicable state and/or federal regulations.

CONCLUSION

There is no reasonable basis upon which to deny the requested permit.

ORDER

The requested conditional use permit is granted subject to the following conditions:

1. The applicant shall comply with all federal and state laws and regulations and Klamath County Ordinances and

regulations applicable to mineral extraction operations, including but not limited to KCLDC Article 81 Section 81.040, a copy of which is marked Exhibit "A", attached hereto and by this reference made a part of this order and KCLDC Article 81 Section 81.050, a copy of which is marked exhibit "B", attached hereto and by this reference made a part of this order. The applicant shall cause to be recorded a written statement in the Deed Records of Klamath County, Oregon, which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and rules for uses authorized by this Code. The applicant shall obtain the necessary permits if a septic system is to be installed.

Dated this 24th day of May, 1996.



Neal G. Buchanan

Deputy Hearings Officer

KLAMATH COUNTY LAND DEVELOPMENT CODE SECTION 24.060 PROVIDES:

"An order of the Hearings Officer may be appealed to the Board of County Commissioners within seven (7) days of its mailing as set forth in Article 33."

3. A complete description of how all the standards set out in Article 81.050, and any site specific ESEE requirements have been met.

F. The review authority shall approve the site plan upon a finding that the proposed or expanded site:

1. Meets all the standards set out under Section 81.050 of this Code; and
2. Any site specific requirements contained in the ESEE are met and satisfied.

Ex. A

81.040 - REVIEW PROCEDURE AND CRITERIA FOR CONDITIONAL USE PERMITS

A. Where the underlying zone lists mining as a conditionally permitted use, and the mineral and aggregate site is listed on the Goal 5 Mineral and Aggregate inventory as 1-A or 1-B, mining operations may be allowed by conditional use permit, and shall be processed as follows:

1. The application of the Mineral and Aggregate Extraction standards shall be accomplished by a Conditional Use Permit as provided in Article 44 of this code.

2. Notification procedures for the purpose of establishing a mineral extraction operation in a zone for which it may be conditionally approved shall differ from Article 32 to require notification of property owners within 1000 feet of the subject property.

3. Applicants for a conditional use shall prepare and submit a statement that documents the nature of the mining activity. The statement shall include:
 - a. Method(s) of production, including types of equipment to be used, hours of operation, access to and from the site, and the anticipated annual extraction;
 - b. Availability of water for dust abatement and reclamation purposes;
 - c. Methods to be employed to minimize visual, dust and noise impacts to surrounding properties, including, but not limited to, utilizing natural landforms and existing vegetation, the placement of landscape or earthen berms, and a vegetative planting scheme; and
 - d. Other information deemed necessary by the planning department to review the proposal.

B. In addition to the general criteria in Section 44.030, the following findings must be made for a Conditional Use Permit for mineral or aggregate extraction:

1. That the site will be operated in accordance with applicable state and/or federal regulations.

2. Standards specified in Section 81.050 are, or will, be met.
3. That the proposed access is engineered to accommodate any increased volume of traffic.
4. That the proposed access can safely handle the type of increased traffic flow which will accompany the development without significantly endangering the public health, safety or welfare.
5. That an adequate water supply is available to the site. (For dust control, required landscaping, reclamation, etc.)
6. That blasting which may be necessary will not damage existing structures or facilities (including wells). In lieu thereof, a bond or certificate of insurance the amount to be determined at the time of the review, shall be provided.

Ex B

81.050 - DEVELOPMENT AND SITING STANDARDS

All operations, except those lawfully established preexisting uses or those preempted by the Oregon Forest Practices Act, shall meet the following standards:

- A. The landowner and operator shall be held jointly responsible for the operation of a mineral extraction site.
- B. Visual quality.
 1. Existing trees and other natural vegetation bordering adjacent public land or a non-resource (urban or rural) zoning district shall be preserved to screen the view of any mineral or aggregate activity including equipment, from any conflicting or sensitive use within the impact area;
 2. If vegetation or land forms do not provide acceptable screening to adjacent public land or non-resource zoned property, appropriate screening shall be provided at the property boundary or nearer to the site. Such screening shall be in the form of a fence, wall, landscaped berm, or natural vegetative cover to supplement any natural screening. The type of screening to be used shall be decided as a function of a site specific ESEE or a Conditional Use Permit:
 3. Screening may not be required when the natural topography of the site offers sufficient screening to screen the view of any mineral or aggregate activity including equipment, from any conflicting or sensitive use within the impact

area. This shall be decided as a function of a site specific ESEE or a Conditional Use Permit;

C. Water Quality.

1. All mineral and aggregate extraction sites shall show proof of a valid Oregon Department of Environmental Quality and/or Oregon Department of Water Resources permit when applicable which shall be decided as a function of a site specific ESEE or a Conditional Use Permit;
2. The operator shall not cause a change in the location of any stream channel or wetland without proof of a valid Oregon Division of State Lands and other affected state or federal agency permit or approval. The need for a valid Oregon Division of State Lands and other affected state or federal agency permit or approval shall be decided as a function of a site specific ESEE or a Conditional Use Permit.

D. Air Quality. All mineral and aggregate extraction sites shall be operated in a manner consistent with air quality regulations.

1. All mineral and aggregate extraction sites shall show proof of a valid Oregon Department of Environmental Quality air discharge permit, when applicable which shall be decided as a function of a site specific ESEE or a Conditional Use Permit;
2. All roads being used by the operator on private land shall be maintained to minimize dust when the road is located within 300 feet of a residence in existence on the date the mining operation was established.
 - a. Dust abatement shall conform to Oregon Department of Environmental Quality standards.
 - b. Dust abatement shall include, but not be limited to, road watering, chemical dust suppressant, and/or road paving or similar treatment.

E. Land Quality. All mineral and aggregate extraction sites shall be operated in a manner consistent with accepted reclamation practices.

1. The operator shall obtain a valid Oregon Department of Geology and Mineral Industries operating permit.
2. Land shall be reclaimed for subsequent beneficial uses. Beneficial use shall be a condition suitable for uses allowed by the zoning district, consistent with a reclamation plan approved by the Oregon Department of Geology and Mineral Industries, or the end use determined as a result of a site specific ESEE analysis or Conditional Use Permit.

F. Operating Setbacks: The setbacks shall be the same as the underlying zone except as follows:

1. Additional setbacks for a proposed site or expansion of an extraction area may be required as part of site specific ESEE or a conditional use permit or a DOGAMI operating permit or reclamation plan.

G. Hours of Operation.

1. Operation of mineral and aggregate extraction sites shall be limited to the hours between 6:00 a.m. and 10:00 p.m. Monday through Saturday.
2. Operating hours may be modified as determined by a site specific ESEE or a County Conditional Use Permit.
3. Modification of hours for operations involving public contracts for public facilities or public roads shall require the Director of Public Works's input regarding anticipated costs or cost savings of modified hours.
4. Subsequent modification of operating hours may be made through the Planning Director review procedure with notice as set out in Section 81.030(A).

H. Blasting Restrictions.

1. Blasting shall be restricted to the hours of 9:00 a.m. to 6:00 p.m., Monday through Friday. No blasting shall occur on Saturdays, Sundays or the following holidays: January 1; Memorial Day; July 4; Labor Day; Thanksgiving Day; December 25.
2. Exceptions to the blasting restrictions may be granted based on a site specific ESEE, or a Conditional Use Permit or if necessary to complete a specific road or construction project. The following criteria must be observed:
 - a. There are no noise sensitive uses located within one thousand (1000) feet of the mining site; or
 - b. The site is regulated by the Forest Practices Act; or
 - c. If noise sensitive uses are located within one thousand (1000) feet of the mining site, the increased activity will not exceed noise standards established by the Department of Environmental Quality; and
 - d. The operator of the mining site shall be responsible for notifying all noise sensitive uses located within one thousand (1000) feet of the mining site in person or by first class mail which is received at least forty-eight (48) hours prior to the date and approximate time of the blasting activity for which an operator receives an exception.

- I. The site may be blocked to the public through the installation of fencing and locked gates as determined by either the site specific ESEE or the conditional use process.
- J. Nuisance Mitigation. Mineral and aggregate sites shall be maintained and operated in a manner not detrimental to public health, safety and welfare.

81.060 - CONDITIONS

The following conditions may be imposed on a 1-A, 1-B or a site which is not on the Goal 5 Mineral and Aggregate inventory, upon a finding that additional restrictions are warranted:

- A. A modification of required setbacks for adjacent land uses.
- B. Limiting the manner in which the use is conducted:
1. Restraints to minimize noise, vibration and blasting, air pollution, glare, odor, dust, etc.;
 2. Limitations on lighting (i.e., location, intensity, possible shielding);
 3. Other restrictions deemed necessary by findings of fact.
- C. Additional access roads which circumvent residential areas.
- D. Off-site stockpiling or processing.
- E. Air, water or reclamation standards exceeding those required by state or federal law if justified by findings of fact.
- F. Limiting the height, size, or location of buildings or structures.
- G. Protecting and preserving existing trees, vegetation, water resources, wildlife habitat, or other significant natural resources.

81.070 - LIFTING THE OVERLAY ZONE

- A. The owner of the property a mineral or aggregate site is located on, must submit a letter requesting the significant Resource Overlay Zone be lifted and the site be removed from the Mineral and Aggregate Inventory.
- B. The owner of the property a mineral or aggregate site is located on which is being operated under a valid Department of Geology and Mineral Industries (DOGAMI) permit must submit proof from DOGAMI that the site has been closed and reclaimed.

VIII-9B

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 30th day
of May A.D., 19 96 at 10:01 o'clock AM., and duly recorded in Vol. M96
of Deeds on Page 15549

Bernetha G. Letsch, County Clerk

FEE No Fee Return: Commissioners Journal

By [Signature]