

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the application by:  
Stiles for BROWN

)  
) ORDER  
) CASE NUMBER 109-98  
)

NATURE OF THE REQUEST

The applicants have requested permission to expand an existing mineral extraction site and accessory uses. The applicant has 80 acres but only a small fraction of this land contains the proposed site. This matter is reviewed for compliance with the KCLDC and specifically article 81. This matter is before the hearings officer on remand from the County Commissioners.

PROPERTY LOCATION

The property is located E of the Westside Rd, approximately 12 miles N of Rocky Point and is more particularly described as: Por. Sec 2, T 34S R6E TA 3406-00-400

NAMES OF PARTICIPANTS

The hearings officer reviewing this application is Joan-Marie Michelsen. The applicant appeared and offered testimony as did other persons. The applicant was represented by Don Crane, Attorney at Law. The planning department was represented by Kim Lundahl. The recording secretary was Karen Burg.

MATERIALS CONSIDERED

All evidence submitted by the applicant, the Staff Report and the written and oral testimony given at the hearing on this matter was considered.

FINDINGS

The hearings officer finds as follows:

- a. That the area proposed for the site is extremely near an active and productive Bald Eagle nesting site.
- b. That the USFS believes this particular nest to be the most productive on its Ranger District.
- c. That to disturb the nesting or activities of a Bald Eagle is contrary to the values and laws of this nation.
- d. That the proposed activities have a significant probability of effecting the Eagles and the viability of the nesting site.
- e. That it may be possible to mitigate the effects of the proposed activities.
- f. That the site also has potential impacts on Elk and the riparian area of Threemile Creek.
- g. That the nature of the mitigations proposed by the USFS and ODFW are based on probabilities and may or may not prove effective.
- h. That the nesting season is generally accepted to be from January 1 to August 31 each year and is defined as such for the purposes of this order.

- i. That the term fledged for the purposes of this order is defined to mean that the eagle brood has fledged and actively moving away from the nest.
- j. That the applicant submitted as part of his packet the letters from ODFW and the USFS and agreed in his proposal that their guidelines were reasonable and feasible.
- k. That the applicant later appealed the restrictions placed upon him by those agreements.
- l. That for the third hearing the applicant finally chose to retain counsel.
- m. That ODFW has been working with the applicant and has appeared and offered testimony with the consent of the applicant.
- n. That without this expert testimony by ODFW this request for modification would have been denied by the hearings officer based on a failure to provide sufficient information.
- o. That the applicant failed to raise his concerns over the proposed mitigation measures at any of the earlier hearings.
- p. That the applicant was without counsel and may not have understood what was at issue.
- q. That the County Commissioners deem the previous statements sufficient to provide the ability to re-consider this matter.
- r. That the applicant has voluntarily withdrawn the objection and appeal of Conditions a, d, o, t, and v in their entirety.
- s. That the applicant has voluntarily withdrawn his objection and appeal to condition g, except as it relates to hauling.
- t. That the applicant withdraws his objection and appeal of item h, except as it relates to the new access road to be constructed off of the existing USFS road.
- u. The applicant has modified the proposal and doesn't want a bridge over Threemile creek.

#### ORDER

Therefore, based on the above it is hereby ordered that the previous conditions which were not appealed or for which the appeal was withdrawn are deemed to be final. They are included here for the convenience of the applicant and all future interested parties:

The applicants request to construct a mineral extraction site on the delineated portions of Government lots 16, 17 and 24 is approved subject to the conditions stated below.

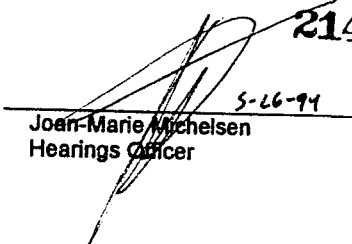
- a. The applicant shall file with the County a sworn statement that the below conditions are being met within 10 days of January 1 in each even numbered year starting with the year 2000 and continuing thereafter for the life of the extraction site.
- b. The applicant shall maintain a 300 foot buffer adjacent to Threemile Creek, running from the centerline of the creek, and shall allow no activity within that zone.
- c. The applicant shall not disrupt the stream or build a new road over it.
- d. That if at any time personnel from the County, State, ODFW or the USFS wish to enter upon his land, during regular working hours, with at least one hour advance notice, for the purpose of verifying that the mitigations herein required are being complied with the applicant or his successors in interest shall allow such inspection.
- e. That a buffer zone of ¼ mile from the nest is protected from any activity at all.
- f. That there be a buffer of ½ mile surrounding the nesting site during the nesting season of January 1 to August 31 of each year. That no work occur within this buffer time and zone except as specifically permitted below.
- g. That no crushing or washing, of any extracted or other material associated with the site occur during the nesting season on the applicants property within the ½ mile buffer.
- h. That no road construction shall occur during the nesting season, except for the access road from the existing USFS road. This may only be constructed or worked

on when the applicant is legally permitted to be working or extracting material from the pit.

- i. That the applicant construct and maintain, as shown in the application and map of May 17, 1999 by Adkins Consulting, a berm to be no less than 20' in height which will protect the nesting site from visual and/or auditory disruption. This berm shall be vegetated or otherwise managed to prevent erosion. The location of the berm is approximately marked on the map and shall be determined with consultations between the applicant and ODFW.
- j. That the applicant comply with all State, Federal and Department of Geology and Mineral Industries regulations and restrictions.
- k. That the applicant apply for and receive a DOGAMI permit and follow it.
- l. That the applicant stay above the level of the Groundwater unless authorized to go below it by DOGAMI.
- m. That there be no storm water or other water discharge from the site.
- n. That when the operation is no longer active that the land shall be reclaimed to a beneficial use no less than that condition stated in the application. This work shall begin as soon as feasible after the conclusion of active use or as directed by Oregon Law and DOGAMI.
- o. That any storage stockpiles which will or may be used during the nesting season be out of the line of site of the nest and outside the ½ mile buffer area.
- p. That during the nesting season the applicant should make reasonable efforts to mitigate any use of the land so as not to disturb the nesting process.
- q. That the applicant comply with all regulations regarding the disposal of sewage on the site.
- r. The applicant shall show proof of a valid ODEQ air quality discharge permit or waiver thereof by DEQ prior to starting operations.
- s. The hours of operation shall be limited to 7:00 am to 7:00 p.m. Monday to Saturday.
- t. There shall be no blasting.
- u. The applicant shall maintain a visual screen or buffer of trees between his site and the highway such that the operation is not visible from the Westside Road.
- v. That the above conditions regarding the nesting site shall remain in effect until the USFS declares the nest to be abandoned, unless that abandonment is by the fault or negligence of the applicant in which case this permit is void.
- w. That the screening trees shall not be removed.
- x. That the existing older trees between the proposed pit and the existing forest service road shall not be disrupted.
- y. That for the calendar years 1999 and 2000 the applicant is permitted to enter into the pit area which is approximately marked on the May 17, 1999 in yellow after July 1 of each year.
- z. That the timing for building the berm will be at the sole discretion of the ODFW who may require it before any work begins or may permit it to be constructed after the Eagles have fledged for the year 1999. The applicant shall consult with ODFW before starting work on the berm.
- aa. The applicant may enter the ½ mile buffer before the end of the nesting season but after July 1 of any year only as stated above in "y" or with a written statement from, or approved by, ODFW that the Eagles have fledged and that work will not be disruptive. The statement may be prepared by ODFW or a private biologist with expertise in this area.
- bb. This statement is to be filed with the county planning department before any work begins in any year that the nesting season restrictions are modified by ODFW.

Dated this May 26, 1999

21437

  
Joan Marie Michelsen  
Hearings Officer

5-26-99

# NOTICE OF APPEAL RIGHTS

Your are hereby notified this application may be appealed to the Klamath County Board of Commissioners by filing with the Klamath County Planning Department a Notice of Appeal as set out in Section 33.004 of the Klamath County Land Development Code together with the fee required within SEVEN DAYS (7) following the mailing date of this order.

State of Oregon, County of Klamath  
Recorded 6/01/99, at 11:31 a.m.  
In Vol. M99 Page 21434  
Linda Smith, County Clerk  
Fee \$ —



Return: Commissioners Journal