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Fee: \$52.00

BEFORE THE PLANNING DIRECTOR KLAMATH COUNTY, OREGON

IN THE MATTER OF CONDITIONAL)
 USE PERMIT 57-09 FOR SOUTH)
 CHEMULT PUMICE TO AMEND THE)
 ORIGINAL CUP 47-06 TO ALLOW AN)
 ADDITIONAL 10 ACRES TO BE)
 MINED FOR PUMICE AND CINDERS)
 ON A 640 ACRE TRACT OF)
 PROPERTY ZONED FORESTRY (F).)
 IDENTIFIED AS: R-2808-00000-00500)

CUP TYPE II
 ADMINISTRATIVE
FINAL ORDER

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1. NATURE OF THE REQUEST:

The applicant requests a Conditional Use Permit to amend the original CUP 47-06 to allow an additional 10 acres to be mined for pumice and cinders on a 640 acre tract of property zoned Forestry (F). The Acting Planning Director reviewed the request on December 16, 2009 pursuant to KCLDC Article 22 – Administrative Review Procedure, Article 32 – Public Notice, Article 44 – Conditional Use Permit, Article 55 – Forestry, Article 69 – Rural/Wildland Fire Safety Standards, and Article 81 – Mineral and Aggregate Extraction Standards. The request was reviewed for conformance with all applicable elements of the Klamath County Land Development Code.

2. NAMES OF THOSE WHO PARTICIPATED:

The Acting Planning Director in review of this application was Bill Adams. Mark Gallagher, AICP, Planner III prepared the Final Order.

3. LEGAL DESCRIPTION:

The subject property described in the Conditional Use Permit application is described as Township 28 South, Range 8 East Willamette Meridian, Tax Lot 500. This property is approximately 2 miles east of Highway 97 on Forest Service Road #86 (Bear Flat Road) which intersects Highway 97 approximately a half mile north of Beaver Marsh..

4. RELEVANT FACTS:

The applicant requests to amend the original CUP 47-06 to allow an additional 10 acres to be mined for pumice and cinders on a 640 acre tract of property zoned Forestry (F). The property is not located within a big game winter range area and no Significant Resources are designated on the parcel. The additional 10-acre extraction site itself is not listed as a significant resource but is listed as a non-protected 1-A resource.

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The subject property is not located within a floodplain nor are there any mapped wetlands near the mine area. The property is within the High Wildfire Hazard Zone.

In the applicant's submittal they explain that the property has been logged in the past. Reclamation of the area will occur by placing the overburden back over the mined area consistent with the land contours and replanting consistent with DOGAMI requirements and the existing reclamation plan. All lands within 1000 feet of the extraction site are owned by J.W.T.R, LLC and MLM Pumice and Cinders, LLC and none of the conflicting uses as defined in Section 57.040 of the Klamath County Land Development Code exist within this area including dwellings, manufactured dwellings or recreational vehicle parks, schools and churches, parks, campgrounds, hunting and fishing preserves, community centers and recreation facilities, motels or travelers' facilities or public buildings. The edges of the extraction area are buffered by a 50-foot wide strip as well as berms created with the overburden.

The applicant's submittal also explains that the extraction operation does not include any crushing, so no potential sparking occurs from that operation. All the equipment has spark arresters as required by law. They also stated that the local fire chief has been contacted and verification was made that the use would not significantly increase fire hazards or increase fire suppression costs.

In response to the agency notification, Klamath County Public Works states that Bear Flat Road is named for addressing purposes only and is actually Forest Service Road #86. They recommended that the applicant be required to obtain a letter from the US Forest Service such as the one attached to their comments. In the sample letter, which addresses ingress and egress, it states that the regulations cover personal ingress and egress and do not pertain to the use of the road for commercial hauling of cattle, timber, mineral or other products to and from private lands. In the application submittal, the applicant states that South Chemult Pumice, LLC has a yearly contract with the Forest Service for the use of the road, and provides road maintenance as part of that contract, which includes watering for dust and grading the road.

One letter of remonstrance was received from a potentially affected property owner that is approximately 1.5 miles southwest of the subject site. It appears that the property is currently vacant with no improvements. His concern was that the additional mining may cause wind driven particles of pumice or cinders to drift over his property causing respiratory health problems and a reduced value on his property. The applicant states that a 10,000 gallon water tank is located on site for both dust suppression and fire suppression as well as an additional 4,000 gallon tank for fire suppression and a 1,000 gallon water truck to sprinkle roads and the operating area. The applicant will also meet DOGAMI requirements visual and noise/dust screening surrounding the extraction area.

5. FINDINGS:

All evidence submitted shows that the approval criteria as set out in the code have been satisfied. The Acting Planning Director finds this application does conform to criteria set out as follows:

KCLDC Article 55.050(A-F) – Forestry Zone Conditional Use Criteria

The applicant has addressed this criteria in their supplemental submittal to their application (Exhibit 1) from Richard Stevens and Associates. Staff concurs with their comments and findings.

KCLDC Article 57 – Significant Resource Overlay

The Significant Resource Overlay section does not apply to this site as it is classified as a non-protected 1-A resource in the Comprehensive Plan.

KCLDC Article 81 – Mineral and Aggregate Extraction Standards

The applicant has also addressed this code section in their supplemental submittal to their application (Exhibit 1) from Richard Stevens and Associates. Staff concurs with their comments and findings.

6. ORDER:

Therefore, upon review of the information and exhibits, it is ordered the request of South Chemult Pumice for an amendment of CUP 47-06, to be superseded by CUP 57-09 is **APPROVED** subject to all Federal and State law, rules, or policy; Klamath County Land Development Code and County Ordinances; Oregon Fire Codes and Appendices; Oregon Building Codes and Appendices; Klamath County Public Works Standards, Policies, and Procedures; and including the Applicant's Proposed Findings of Fact as stated in their application supplement, and subject to the following additional Conditions of Approval:

Condition #1

Prior to issuance of any development permits, the applicant shall record a restrictive covenant signifying compliance with Article 69 (Rural/Wildland Fire Safety Standards) of the Klamath County Land Development code.

Condition #2

Prior to application for site development permits, this final order must be recorded to the subject property. The applicant will supply the Planning Department with the applicable County Clerk recording fees and the Planning Department will record the final order on behalf of the applicant.

Condition #3

Prior to extraction operations beginning, the applicant shall provide a copy of the US Forest Service approval for use of Forest Service Road #86.

This approval will expire two years from the date of approval unless the use has commenced or this Conditional Use Permit is extended.

DATED this 16th day of December, 2009.

Bill Adams
Bill Adams, Acting Planning Director

Signed & Acknowledged before me this 22 day of December, 2009.

Elizabeth Nan Patterson

NOTARY PUBLIC FOR OREGON

My Commission Expires:

August 18, 2013

