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LEGAL COUNSEL

DESCHUTES COUNTY OFFICIAL RECORDS CJ 2009-1536
NANCY BLANKENSHIP, COUNTY CLERK
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2009-1536

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending the Deschutes County Code *
Chapter 18.52 to Allow Public Safety Operations in * ORDINANCE NO. 2009-026
the Surface Mining Zone, and Declaring an *
Emergency. *

WHEREAS, the Oregon Department of Transportation submitted a text amendment to Deschutes County Code (DCC) Chapter 18.52 to allow public safety operations in the Surface Mining Zone; and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on October 1, 2009 before the Deschutes County Planning Commission, and on October 22, 2009 the Deschutes County Planning Commission recommended approval of the proposed text amendment; and

WHEREAS the Board of County Commissioners considered this matter after a public hearing on November 30, 2009 and concluded that the proposed changes are consistent with the County's Comprehensive Plan, and that the public will benefit from changes to the land use regulations ; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC Section, 18.52.115, Extended Operating Hours, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined.

Section 2. FINDING. The Board adopts as its findings in support of this decision, Exhibit "B," attached and incorporated by reference herein.

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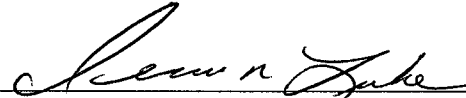
Section 3. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

Dated this 30th of Nov., 2009

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON



TAMMY BANEY, CHAIR



DENNIS R. LUKE, VICE CHAIR

ATTEST:



Recording Secretary



ALAN UNGER, COMMISSIONER

Date of 1st Reading: 30th day of Nov., 2009.

Date of 2nd Reading: 30th day of Nov., 2009.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Tammy Baney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alan Unger	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 30th day of Nov., 2009.

ATTEST:



Recording Secretary

18.52.115. Extended Operating Hours.

Notwithstanding the limitations set forth in an approved site plan for surface mining or the limitation on hours of operation set forth in DCC 18.52.110(I), a special operating permit for extended hours of operations at a mining site may be approved when the Planning Director or Hearings Body finds that an applicant demonstrates that:

- A. Project Necessity. Extended hours of operation are necessary to construct capital improvements and other specific public roadway improvements, including but not limited to public safety operations, road widening, paving, surfacing and realigning, where practical difficulties not created by the applicant such as transportation management requirements necessitate project construction and operation of equipment outside the hours specified in DCC 18.52.110(I) or otherwise set forth in a surface mining site plan;
 - B. Equipment Limitation. During the extended hours of activity, operations at the mining site shall include only those uses allowed under DCC 18.52.040 and, when already approved as a conditional use, those uses listed in DCC 18.52.050, including vehicular traffic, and shall be limited to the minimum necessary to complete the project; and
 - C. Time Limitation. Except as provided in (D) below, ~~A~~activities approved under DCC 18.52.115(B) shall not exceed a period of 14 days but may be renewed for successive periods not exceeding three days each if: the extension is necessary to complete the roadway or capital improvement project; and transportation management concerns or unique project characteristics justify the extension.
 - D. Public safety operations.
 - 1. Public safety operations are those operations permitted under DCC 18.52.040 that are required to respond to a road hazard or incident such as snow, ice, a vehicle crash or other road blockage such as a tree, power line, fire, or animal.
 - 2. Public safety operations are exempt from the time limitations imposed by DCC 18.52.115(C) and 18.52.110(I), provided that the noise and air quality standards of DCC 18.52.110 are met at all times.
- ~~DE~~.Noise Control. Activities permitted under DCC 18.52.115 are subject to DCC 8.08.090(D). (Ord. 2009-026 §1, 2009; Ord. 98-038 §1, 1998)

EXHIBIT "B"

PURPOSE & BACKGROUND

This is a citizen-initiated (Oregon Department of Transportation) text amendment to Chapter 18.52 (Surface Mining Zone) of Title 18 of the Deschutes County Code, to include language allowing for public safety operations/activities within the SM zone. The language would allow for the possibility of ODOT establishing a site for public safety operations/activities for the roads (highways) under their administration. While this text amendment is essentially directed at one surface mining site, which is the ODOT site on Highway 126, just east of Sisters, it would apply to all zoned surface mining sites, owned by a public entity.

The applicant is proposing to amend section 18.52.115, Extended Operating Hours, to provide for public safety operations for ODOT.

TEXT AMENDMENT REVIEW CRITERIA & ANALYSIS

The proposed amendment revises Deschutes County Code Title 18, Chapter 18.52, to permit public safety operations such as: the loading and distribution of road sanding or de-icing equipment (trucks) and materials, and incident response (e.g. sending teams to a vehicle crash, or road hazard such as a tree, power line, fire, or animal blocking the roadway).

ISSUES

The primary pro or favorable issue is that this ordinance change could provide for a reasonable and efficient use of publicly owned surface mining sites, by allowing them to be used for something other than just resource (gravel, cinders, sand) storage.

The primary con or non-favorable issue would be the potential noise associated with these operations during off hours for normal use.

The Planning Commission forwarded a recommendation of approval for the proposed text amendment at their October 22, 2009 meeting. Staff concurs with the applicant's findings on conformance with the intent of the SM zone and the comprehensive plan. Staff believes that the proposed use will not impact any mining resource identified in the County comprehensive plan, and will be consistent with the plan.

CONFORMANCE WITH THE DESCHUTES COUNTY COMPREHENSIVE PLAN

All amendments to the zoning regulations must comply with the County's comprehensive plan. The following is an analysis of those applicable plan provisions.

Chapter 23.100, Surface Mining

Under Section 23.100.060, the following General Policy applies:

To protect and utilize appropriately, within the framework established by Statewide Land Use Planning Goal 5 and its implementing administrative rules, the mineral and

aggregate resources of Deschutes County, while minimizing the adverse impacts or mineral and aggregate extraction and processing upon the resource impact area.

The proposed text amendment allows for the continued use of mineral and aggregate resources in the surface mining zone, while providing for highway/road maintenance, including hours allowed beyond the normal surface mining hours established under DCC 18.52.110(I). The proposed amendment will assure the minimization of any adverse impacts of surface mining operations by requiring that State noise and dust regulations are continuously met.

Chapter 23.64, Transportation System Plan

Under Section 23.64.020, the following policy applies:

- i. The lead agency for transportation project review in Deschutes County shall be:
 1. Deschutes County for projects outside UGBs;
 2. The affected city for projects within UGBs; and
 3. The State of Oregon, Deschutes County and affected cities on projects involving state-owned facilities.

The proposal for extended hours of operation for public safety operations, including highway maintenance, will maintain the roads so that the roads may continue to be used by the public as outlined in the transportation system plan. The extended hours will also lessen the stress on other roads not designed to handle the traffic that will result from drivers taking a detour around emergency areas.

Chapter 23.52, Economy

The proposal will comply with the goals and policies listed in this chapter because the extended hours will allow ODOT to clear the highways earlier and make them more safe for people traveling to and from the County for business and for delivery and service vehicles.

Chapter 23.80, Natural Hazards

The extended hours will further the goals and policies of this chapter by allowing ODOT to respond during those hours to natural hazards that may be blocking the highways.

Chapter 23.88, Agriculture and Chapter 23.92, Forest Lands

The County's goal of preserving and maintaining agricultural and forest lands will be met because the proposal will allow ODOT to clear the highways of hazards that may impede the ability of farmers, ranchers and timber companies to receive needed supplies or to deliver their products to the market.

The remaining Comprehensive Plan chapters are not implicated or are not relative to this proposal.