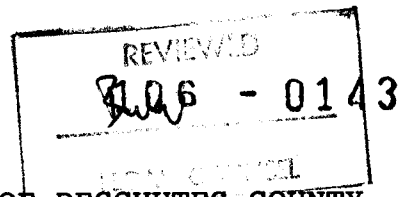


91-03393



BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Ordinance No. PL-15, the Deschutes County Zoning Ordinance of 1979, As Amended, Revising Provisions Concerning Surface Mining and Declaring an Emergency.

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MARY SUE PENHOLLOW COUNTY CLERK

MICROFILMED

FEB 21 1991

ORDINANCE NO. 91-002

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

Section 1. Section 4.100(11) of Ordinance No. PL-15, Surface Mining Zone - SM, is amended to read as follows:

"11. General Operation Standards. Prior to the commencement of any surface mining activity, and no later than site plan review if such review is required under this Section, the applicant shall demonstrate that the following standards are or can be met by the surface mining operation:

A. Access.

a. All on-site roads used in the mining operation, and access roads from the site to a public road maintained by a government agency, are designed and constructed to accommodate the vehicles and equipment which will use them, and shall meet the following minimum standards:

1. All access roads within 100 feet of a paved county road or state highway are paved unless the applicant demonstrates that other methods of dust control, including application of oil or water, will be implemented in a manner which provides for the safety and maintenance of the county road or state highway.

2. Roads within the surface mining parcel which are used as part of the surface mining operation are constructed and maintained in a manner by which all applicable DEQ standards for vehicular noise control and ambient air quality are or can be satisfied.

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3. All roads used for mining are paved and will be adequately maintained at all points within 250 feet of a dwelling or other dust-sensitive use existing on the effective date of Ordinance No. 90-014.

- b. Improvements or fees in lieu of improvements of public roads, county roads and state highways may be required when the planning director or hearings body, in consultation with the appropriate road authority, determines that the increased traffic on the roads resulting from the surface mining activity will damage the road sufficiently to warrant off-site improvement. If a fee in lieu of improvements is required, the amount of the fee shall reflect the applicant's pro-rata share of the actual total cost of the capital expenditure of the road construction or reconstruction project necessitated by and benefiting the surface mining operation. Discounts for taxes and fees already paid for such improvements, such as road taxes for vehicles and for property already dedicated or improved, shall be applied.

B. Screening.

- a. The site is screened to meet the standards specified in paragraph (b) below, unless one of the exceptions in paragraph (f) below applies.
- b. Performance Standard. When screening is required by paragraph (a), it obscures the view of the screened uses from the protected uses with the methods and to the extent described in paragraph (e) below.
- c. Protected Uses.
1. Noise-sensitive or dust-sensitive uses existing on the effective date of Ordinance No. 90-014.
 2. Public parks and waysides.

3. Frontage on roads designated by the county comprehensive plan as collectors, arterials and highways.

4. Areas zoned Landscape Management Combining.

5. Those portions of state and federal scenic waterways from which the surface mining activity is visible from the perspective of a person standing at the high water mark on either bank of the waterway.

d. Screened Uses.

1. All equipment stored on the site.

2. All crushing and processing equipment.

3. All excavated areas except: areas where reclamation is occurring; roadways existing on the effective date of Ordinance No. 90-014; new roadways approved as part of the site plan; material excavated to create berms; and material excavated to change the level of the mining site to an elevation which provides natural screening.

e. Types of Screening.

1. Natural Screening. Existing vegetation or other landscape features which are located on the surface mining site within 50 feet of the boundary of the site, and which obscure the view of the screened uses from the protected uses, shall be preserved and maintained.

2. Supplied Screening. Supplied vegetative screening is screening not already existing and which is added to the site, such as hardy plant species. Plantings shall not be required to exceed either a density of six feet on center or a height of six feet at the commencement of mining. Supplied earthen screening shall consist of berms covered with earth and stabilized with ground cover.

- f. Exceptions. Supplied screening shall not be required when and to the extent that any of the following circumstances occurs:
1. The natural topography of the site offers sufficient screening to meet the performance standard in paragraph (b).
 2. Supplied screening cannot meet the performance standard in paragraph (b) due to topography.
 3. The applicant demonstrates that supplied screening cannot reliably be established or cannot survive for a ten-year period due to soil, water or climatic conditions.
 4. Screened uses that are visible from the protected uses will be concluded and will either be removed or reclaimed within 18 months.
 5. The surface miner and the owner or authorized representative of the owner of the protected use execute and record in the Deschutes County Book of Records a mitigation agreement that waives screening requirements and describes and adopts an alternate program or technique.
- g. Continued Maintenance. Vegetative screening shall be maintained and replaced as necessary to assure the required screening throughout the duration of the mining activity.
- C. Air Quality. The discharge of contaminants and dust created by the mining operation and accessory uses to mining does not exceed any applicable DEQ ambient air quality and emissions standards.
- D. Erosion Control. Sedimentation and erosion resulting from the mining operation does not affect any perennial stream so as to violate DEQ's water quality standards.
- E. Streams and Drainage. Unless agreed to, in writing, by the adjoining property owner(s),

existing natural drainages on the site are not changed in a manner which substantially interferes with drainage patterns on adjoining property or which drains waste materials or waste water onto adjoining property or perennial streams. Where the surface mining site abuts a lake, perennial stream or other perennial body of water, all existing vegetation within 100 feet of the mean high water mark shall be retained unless mining activity is allowed within this area by the site-specific ESEE analysis in the surface mining element of the comprehensive plan.

- F. **Equipment Removal.** All surface mining equipment and related structures will be removed from a mining site within 30 days of completion of all mining and reclamation.
- G. **Flood Plain.** Any mining operations conducted in a flood plain, as defined in this Ordinance, will satisfy all applicable conditional use criteria of Section 4.210(3) through (6) of this Ordinance.
- H. **Noise.** Noise created by a mining operation, vehicles, equipment or accessory uses which is audible off the site does not exceed DEQ noise control standards, due to topography or other natural features, or by use of methods to control and minimize off-site noise, including, but not limited to: installation of earth berms; placing equipment below ground level; limiting hours of operation; using a size or type of vehicle or equipment which has been demonstrated to meet applicable DEQ noise control standards; relocation of access roads, and other measures customarily used in the surface mining industry to meet DEQ noise standards.
- I. **Hours of Operation.**
 - a. **Mineral and aggregate extraction, processing and equipment operation is limited to the following operating hours:**
 - 1. Surface mining sites located within one-half mile of any noise-sensitive or dust-sensitive use or structure existing

on the effective date of Ordinance No. 90-014:

7:00 am to 6:00 pm - Monday through Friday

8:00 am to 5:00 pm - Saturday

2. All other sites:

7:00 am to 10:00 pm - Monday through Saturday

- b. No surface mining activity will be conducted on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day.

J. Drilling and Blasting.

- a. Drilling and blasting are allowed under the site-specific ESEE analysis in the surface mining element of the comprehensive plan.
- b. Drilling and blasting which are to be conducted within one-half mile of any noise-sensitive or dust-sensitive use or structure or agricultural use involving the raising of animals meet or can meet the following standards:
1. DEQ noise standards for drilling and blasting.
 2. A plan addressing the potential for earth movement, flying rocks and other effects on surrounding uses has been submitted to and approved by the County [and DOGAMI].
 3. Blasting will be restricted to the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, and no blasting will occur on Saturdays, Sundays or legal holidays identified in subsection (I)(b) above.
 4. A plan has been submitted to and approved by the County describing how the operator will notify the owners and inhabitants of the protected uses iden-

tified in paragraph (b) of this subsection which are located within one-half mile of the blasting site of proposed blasting by written notice: (a) delivered in a manner calculated to be received by each person entitled to notice at least 48 hours prior to the time the blasting activity will occur; (b) containing a statement providing that the recipient property owner must provide the notice to tenants and inhabitants on the subject property; (c) in the case of ongoing blasting, given at least once each month and specifying the days and hours that blasting will occur; and (d) retained by the operator, along with a list of persons notified, for at least one year after blasting occurs. [NOTE: The Planning Director shall make available for the operator's inspection zoning maps showing the parcels located within one-half mile of the blasting site.]

- K. Extraction Site Size. The size of the area in which extraction is taking place as part of a surface mine does not exceed five acres. For the purpose of this Ordinance, the extraction site size does not include access roads, equipment storage areas, processing equipment sites, stockpiles, areas where reclamation is in progress and similar accessory uses which are necessary to the mining operation. An exception to this standard may be allowed as part of site plan review if the applicant demonstrates that mining techniques normally associated with the specific type of mining in question and commonly used in the surface mining industry require a larger extraction site size.
- L. Fish and Wildlife Protection.
- a. Fish and wildlife values and habitat required by the site-specific ESEE analysis to be conserved and protected are conserved and protected, by use of methods including, but not limited to: seasonal operations and access road closures; retention of or creation of vegetative cover and riparian habitat; and erection of fencing or other barriers to

protect wildlife from steep extraction site slopes.

- b. Mitigation, as defined in this Ordinance, will be provided to compensate for any loss of fish and wildlife habitat caused by the surface mining activity which habitat is required to be protected by the site-specific ESEE analysis. When mitigation is provided, the type and effectiveness of mitigation required has been determined by the planning director or hearings body to be appropriate, from available evidence and, in consultation with the Oregon Department of Fish and Wildlife.

- M. Surface water management is provided in a manner which meets all applicable DEQ water quality standards and DOGAMI requirements, and which demonstrates that all water necessary for the proposed operation of the surface mine, including dust control, landscaping and processing of material, has been appropriated to the surface mining site and is legally available for such use. The applicant must provide written documentation of any water rights from the respective water district and Oregon Watermaster's office prior to any mining of the site.

- N. Storage of equipment, structures and other materials at the site is limited to that which is necessary and appurtenant to the mining operation or other uses permitted on the site.

- O. A security plan for the subject site has been submitted and approved by the County and, where appropriate, by DOGAMI which addresses the following issues:
 - a. lighting;
 - b. fencing;
 - c. gates at access points;
 - d. water impoundments;
 - e. sloping; and
 - f. security of vehicles and equipment.

- P. All impacts of the mining activities identified in the ESEE analysis for the specific site are addressed and have been resolved at

the time of site plan approval or before the start of mining activity."

Section 2. Section 4.100(14) of Ordinance No. PL-15, Surface Mining Zone - SM, is amended to read as follows

"14. Conditional Use Criteria. The criteria set forth in this section shall be the only conditional use criteria applicable to the surface mining activities described below. Compliance with these criteria shall be demonstrated at the time of site plan review.

A. Crushing. When a site has been designated for crushing of mineral and aggregate materials under the site-specific ESEE analysis in the surface mining element of the comprehensive plan, the following conditions apply:

- a. If a crusher is to be located less than one-half mile from a noise-sensitive use or structure existing on the effective date of Ordinance No. 90-014, the applicant shall demonstrate through a noise report from a qualified, registered sound engineer or similarly qualified professional, that the crusher can meet all applicable DEQ industrial and commercial noise control standards as designed and located, or by methods including, but not limited to: modification or muffling of the crusher; placement of the crusher below grade or behind berms.
- b. If a crusher is to remain on the site for longer than 60 days in any eighteen-month period, the applicant shall demonstrate that it will be screened in accordance with Section 11(B) of this Ordinance.

B. Expansion or Replacement of Pre-Existing Dwelling. The following conditions apply:

- a. The expansion or replacement does not reduce the amount of mineral and aggregate resource available on the subject site.
- b. The replaced dwelling or expansion is located and designed to minimize the

impacts of the surface mining operation on the inhabitants of the dwelling.

- C. Sale of Products Extracted or Produced on Parcels Other Than the Subject Parcel. The following conditions shall apply:
- a. The portion of the site where the products will be stored and sold is at least one-half mile from a noise or dust-sensitive use or structure existing on the effective date of Ordinance No. 90-014.
 - b. The access from the point where the products are stored and sold to a public road is not within one-half mile of any noise or dust-sensitive use or structure existing on the effective date of Ordinance No. 90-014.
- D. Processing of Aggregate Into Asphaltic Concrete or Portland Cement Concrete. The following conditions shall apply:
- [a. The processing operation is located more than two miles from a planted vineyard existing on the effective date of Ordinance No. 90-014.]
 - a[b]. If the processing operation meets or can meet all applicable DEQ ambient air quality standards and emission standards for asphalt, asphaltic concrete or portland cement plants.
 - b[c]. If the processing operation is located less than one-half mile from a noise-sensitive use or structure existing on the effective date of Ordinance No. 90-014, the applicant shall demonstrate through a noise report from a qualified, registered sound engineer or similarly qualified professional, that the processing operation can meet all applicable DEQ noise control standards for industry and commerce as designed and located, or by use of methods including, but not limited to: modification or muffling of equipment; location of the processing operation below grade or behind berms.

- c[d]. The point where the vehicles transporting asphalt, portland cement and the raw materials for such products access a public road is not within one-half mile of any noise-sensitive or dust-sensitive use or structure existing on the effective date of Ordinance No. 90-014.
- d. Processing operations temporarily located in conjunction with a specific street, road or highway project will be removed from the site within 30 days of the completion of the project. (NOTE: Batch plants are allowed in industrial zones and may be sited as part of a limited use combining zone in conformance with all plan amendment and zone change requirements of the county comprehensive plan and zoning ordinance.)"

Section 3. Section 4.010(2) of Ordinance No. PL-15, Exclusive Farm Use, EFU-320, Permitted Uses, is amended to add:

"(H) Exploration for minerals."

Section 4. Section 4.020(2) of Ordinance No. PL-15, Exclusive Farm Use, EFU-80, Permitted Uses, is amended to add:

"(H) Exploration for minerals."

Section 5. Section 4.030(2) of Ordinance No. PL-15, Exclusive Farm Use, EFU-40, Permitted Uses, is amended to add:

"(H) Exploration for minerals."

Section 6. Section 4.040(2) of Ordinance No. PL-15, Exclusive Farm Use, EFU-20, Permitted Uses, is amended to add:

"(I) Exploration for minerals."

Section 7. Section 4.060(3)(H) of Ordinance No. PL-15, Multiple Use Agricultural, MUA, Conditional Uses Permitted, is amended to read as follows:

"(E) Exploration for minerals."

Section 8. Section 4.070(2) of Ordinance No. PL-15, Forest Use, F-1, Permitted Uses, is amended by the addition of the following:

"(C) Exploration for minerals."

Section 9. Section 4.080(2) of Ordinance No. PL-15, Forest Use, F-2, Permitted Uses, is amended by the addition of the following:

"(E) Exploration for minerals."

Section 10. Section 4.085(3) of Ordinance No. PL-15, Forest Use, F-3, Permitted Uses, is amended by the addition of the following:

"(E) Exploration for minerals."

Section 11. Section 1.030 of Ordinance No. PL-15, Definitions, is amended by the addition of the following:

"34E. Exploration (for Minerals). Exploration means all activities conducted on or beneath the surface of the earth for the purpose of determining presence, location, extent, grade or economic viability of a deposit. 'Exploration' does not include prospecting, chemical processing of minerals or the off-premises sale or use of any minerals."

Section 12. 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 6th day of February, 1991.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Tom Throop
TOM THROOP, Commissioner

Nancy Pope Schlagen
NANCY POPE SCHLANGEN, Commissioner

Dick Mauldin
DICK MAUBLIN, Chair

ATTEST:

Andrea Blum
Recording Secretary