

RECEIVED

IN THE COUNTY COURT OF THE STATE OF OREGON

JUN 2 - 1993

IN AND FOR THE COUNTY OF WASCO

WASCO CO. CLERK KL

IN THE MATTER OF THE REQUEST OF JON)
 JUSTESEN FOR A COMPREHENSIVE PLAN)
 AMENDMENT FOR ADDITION OF AN)
 AGGREGATE SITE TO THE WASCO COUNTY) O R D I N A N C E
 COMPREHENSIVE PLAN AGGREGATE)
 INVENTORY LIST (#CPA-92-102-WAMF2-H).)
)
)

NOW ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day being one duly set in term for the transaction of public business and a majority of the Court being present; and

IT APPEARING TO THE COURT: That on September 14, 1992, the Wasco County Planning Commission voted 4-1 to deny Jon Justesen's request for Comprehensive Plan Amendment #CPA-92-102-WAMF2-H, for addition of an aggregate site to the county aggregate inventory list in the "M-2" Industrial zone; and

IT FURTHER APPEARING TO THE COURT: That on October 15, 1992, a petition for appeal of the Planning Commission's denial of CPA-92-102 was received from Jon Justesen in a timely manner for such appeal; and

IT FURTHER APPEARING TO THE COURT: That on December 2, 1992, at 10:00 a.m., in the County Courtroom of the Wasco County Courthouse, The Dalles, Oregon, this Court met to conduct a quasi-judicial public hearing on the above matter. The members of the Court were determined to be qualified to hear the matter.

IT FURTHER APPEARING TO THE COURT: That the Court took notice of the record of the Planning Commission, heard the Staff report and received all testimony and evidence from the parties and then closed the hearing for further input. The Court then announced it would deliberate, and based upon the evidence and testimony presented and upon the findings of the Planning Commission, and being fully apprised in the premises, the Court did vote 3-0 to remand to the Planning Commission for a new evidentiary hearing, the application by Jon Justesen for a Comprehensive Plan Amendment.

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IT FURTHER APPEARING TO THE COURT: That on February 8, 1993, the Wasco County Planning Commission held a public hearing, on remand, on Comprehensive Plan Amendment #CPA-92-102-WAMF2-H, a request from Jon Justesen for addition of an aggregate site to the Wasco County Comprehensive Plan Aggregate Inventory list for property in the "M-2" Industrial zone. The Commission opened the hearing, received testimony, and then continued the hearing to a date when the applicant could provide requested information on natural hazards.

IT FURTHER APPEARING TO THE COURT: That on April 5, 1993, at 6:00 p.m., in the Wasco County Courthouse, The Dalles, Oregon, the Wasco County Planning Commission met to conduct a quasi-judicial public hearing on the above matter. Those members of the Commission present were determined to be qualified to hear the matter. The Commission heard the Staff Report and received testimony and evidence from the parties and then closed the hearing for further input. The Commission then continued to deliberate upon testimony received and based upon the evidence and testimony presented and upon the findings of fact and conclusions of law identified in the Staff Report (attachment A), the Planning Commission, being fully apprised in the premises, recommended, on a 6-0 vote, the request for approval for the addition of an aggregate site to the Wasco County Comprehensive Plan Aggregate Inventory list on an 81.31 acre parcel in the "M-2" Industrial zone.

IT FURTHER APPEARING TO THE COURT: That on May 19, 1993, at 1:30 p.m. in the County Courtroom of the Wasco County Courthouse, The Dalles, Oregon this court met to conduct a quasi-judicial public hearing on the above matter. The members of the Court were determined to be qualified to hear the matter. The Court heard the Staff Report and received testimony and evidence for the parties and the closed the hearing for further input. The Court deliberated upon testimony received and based upon the evidence and testimony, and upon the findings of fact and conclusions of law identified in the Staff Report (attachment A), the Court, being fully apprised in the premises, did approve, unanimously, the request for a Comprehensive Plan amendment for addition of an aggregate site to the Wasco County Comprehensive Plan aggregate inventory list.

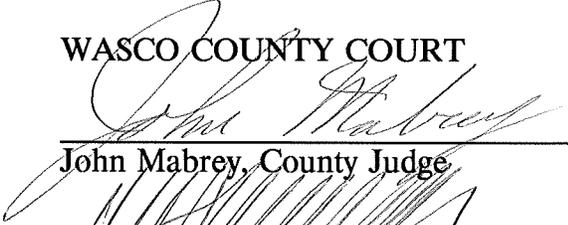
NOW, THEREFORE: Based upon the attached findings of fact and conclusion of law and the Court being fully advised in the premises,

IT IS HEREBY ORDERED: That Comprehensive Plan Amendment #CPA-92-102-WAMF2 for Jon Justesen to add an aggregate site to the county aggregate inventory list in the "M-2" Industrial zone, on property described as Township 4 South, Range 13 East W.M., Section 10, Tax Lot 2800, is hereby issued.

Regularly passed and adopted by the County Court of the County of Wasco, State of Oregon.

DATED this 2nd day of June, 1993.

WASCO COUNTY COURT



John Mabrey, County Judge

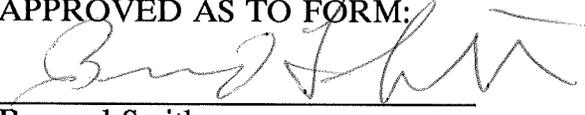


Scott McKay, County Commissioner

absent

Chuck Filbin, County Commissioner

APPROVED AS TO FORM:



Bernard Smith
Wasco County District Attorney
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993 0224 (12)

TO: Wasco County Planning Commission
FROM: Wasco County Planning & Economic Development Office
HEARING DATE: February 8, 1993
Continued to April 5, 1993
SUBJECT: Comprehensive Plan Amendment CPA-92-102-WAMF2-H
AMENDED STAFF REPORT April 5, 1993 (Amendments are
in bold type)

APPLICANT: Jon Justesen
REQUEST: To obtain a comprehensive plan amendment to add a mineral resource site to the county inventory.
PRIOR ACTIONS: • Partition Plat 91-0010B, June 23, 1991.
• Remand from County Court December 2, 1993
LOCATION: The subject property is located in Tygh Valley southwest of Highway 197. The property is described as Township 4 South, Range 13 East W.M., (Section 10), Tax Lot 2800.
COMPREHENSIVE PLAN AND ZONING DESIGNATIONS: The property on which the extraction is proposed is designated Medium Industrial on the Comprehensive Plan map, and is zoned "M -2" Medium Industrial. It is located in the "Flood Hazard Zone" and Environmental Protection District 1 (Flood Hazard Overlay).
PROPERTY OWNER: Justesen Ranches
REGULATIONS: Wasco County Comprehensive Plan;
Wasco County Land Use and Development Ordinance
AUTHORITY: Section 2.060 A. and 2.060 C.13. of the Wasco County Land Use and Development Ordinance.
COMMENTS: Letter from adjacent property owner (Dhone) dated February 6, 1993
EXHIBITS: A. Application as submitted.
B. Notice sent to affected agencies and adjacent property owners.
C. Site plan

EXHIBIT A

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D. Report of on-site inspection by DOGAMI

FINDINGS OF FACT:

A. Characteristics of Property

1. Lot Size: 81.31 acre previously partitioned parcel. Previously owned by Mountain Fir Lumber Company. 26 acres of the 81.31 acres would be affected by this application.
2. Access: Hwy. 197
3. Land Use: Vacant. Formerly a log deck for the Tygh Valley Mountain Fir operation.
4. Surrounding Land Use: Farm use, primarily dry land grazing and wheat production and residential use in Tygh Valley. The site is in the flood plain of Tygh Creek, and the White River, surrounded by rolling hills. There is some scattered residential uses abutting the parcel.
5. Soils: According to the Soil Survey of Wasco County, OR - Northern Part, the subject soils are classified as Quincy loamy fine sand, wet with a capability unit rating of IIIw-1. These soils are subject to flooding, and have a high water table. Streamside vegetation is identified as being important to streambank stabilization and wildlife cover, especially shrubs and giant wildrye.
6. Taxes: Industrial (vacant).
7. Sewage Disposal: Not Applicable to this application.
8. Water: Water Rights Permits #6 6945 and 40955. The applicant states there is a spring and well on the property.
9. Fire Protection: Juniper Flat Fire District.

B. Comprehensive Plan Provisions and Analysis

1. Before an amendment can be granted, the proposed amendment shall demonstrate compliance with the State of Oregon Statewide Planning Goals where applicable, or if not applicable explained why an exception should be adopted as provided in Statewide Goal #2 Part II. Reason and facts shall

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be given why an exception should be adopted including:

- a. Why the proposed use should be provided for;
- b. What alternative locations within the area could be used for the proposed use;
- c. Long-term environmental, economic, social and energy consequences to the locality, the region or the State of Oregon from not applying the Goal; and
- d. How the proposal would be compatible with adjacent uses.

Goal 1 - Citizen Involvement

To develop a citizen involvement program that insures the opportunity of citizens to be involved in all phases of the planning process

Finding: The Wasco County Comprehensive Plan was adopted by Wasco County and acknowledged by LCDC August 25, 1983. This goal was met by the original acknowledgment process. Current public notice requirements were met regarding this proposal. The proposal is in compliance with Goal 1.

Goal 2 - Land Use Planning

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decision and actions.

Finding: The Wasco County Comprehensive Plan was adopted by Wasco County and acknowledged by LCDC August 25, 1983. This goal was met by the original acknowledgment process. Current public notice requirements were met regarding this proposal. The proposal is in compliance with Goal 2.

Goal 3 - Agriculture

to preserve and maintain agricultural lands.

Finding: Not applicable. The subject parcel is zoned M-2 Medium Industrial. This proposal does not affect agricultural lands.

Goal 4. - Forest Land

To conserve forest lands by maintaining the forest land base and to protect the states forest economy.

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Finding: Not applicable. The subject parcel is zoned M-2 Industrial. This proposal does not affect forest lands.

Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources.

To conserve open space and protect natural and scenic resources.

Finding: Natural Resources - According to the inventory compiled by the Oregon Natural Heritage Program, Oregon Natural Areas, Tygh Creek and the White River are identified as natural areas. (Reference # WC-20 "Tygh Creek"). According to the report, the riparian communities of Tygh Creek and the White River are "relatively undisturbed,... and of substantial size. Intact riparian communities of any size are rare east of the Cascades." Maintaining the integrity of these communities is recommended by this document. Conditions requiring a 100 foot setback from both Tygh Creek and the White River would help to maintain the integrity of these communities. A condition of the DOGAMI inspection report page 3, condition 4, (dated Feb. 17, 1993) states that cattle must be excluded from the site until the site is reseeded and the reclamation approved by DOGAMI. This condition would also assist to insure the integrity of the riparian community.

Additionally, Tygh Creek and the White River are listed in the inventory of Natural Areas in the Wasco County Comprehensive Plan, table 12.5, pages 52-6. As such they come under the Environmental Protection District overlay zone Division 7 ((Natural Areas). This overlay is designed to protect the identified natural value by allowing only uses which will not permanently destroy the natural value. A condition of the pending conditional use permit requiring a setback of the proposed excavation boundary of 100' from high water of both Tygh Creek and the White River would help to mitigate impacts to the riparian corridors. Additionally the required reclamation plan should indicate reseeded of the excavated area with native grasses. With this condition made part of the pending Conditional Use Permit application (CUP 92-128-WAMF2-H) the proposal would comply with Goal 5.

The proposed site is not within the county Big Game Winter Range. Through literature review (Wasco County Comprehensive Plan), there was no evidence of significant wildlife habitat on the site, thus impact to sensitive wildlife habitat is not anticipated. Furthermore, at draft time no comment was received from the Oregon Dept. of Fish and Wildlife.

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Historic Resources - According to the Wasco County Historical Landmarks Committee Inventory of Historic Landmarks there are no significant landmarks affected by this proposal.

Open Space- Agricultural lands are considered open space in Wasco County in accordance with Goal 5. The proposed site is zoned M-2 (Industrial). This proposal will affect approximately 26 acres of land zoned as industrial for a limited time, after which time it will be reclaimed to a like use. As such the proposal complies with Goal 5.

Goal 6 - Air, Water and Land Resources Quality

To maintain and improve the quality of the air, water and land resources of the state.

Finding: ■ Concerning land resource quality, an approved Dept. of Geology and Mineral Industries (DOGAMI) reclamation plan should be made part of the pending Conditional Use Permit Application. Said reclamation plan is required to restore/mitigate the land resource and shall be submitted to the Wasco County Planning and Economic Development Office for a consistency review prior to excavation. ■ According to the Soil Survey of Wasco County, OR - Northern Part, the subject soils are classified as Quincy loamy fine sand, wet with a capability unit rating of IIIw-1. These soils are subject to flooding, and have a high water table. The required reclamation plan should address anticipated affects to the ground water. With the condition for a reclamation plan as a requirement in the pending Conditional Use Permit application (CUP 92-128-WAMF2-H), the proposal will comply with Goal 6.

■ It is evident that dust emissions affecting air are of paramount concern. A condition requiring a water source to abate the dust emissions should be made part of the pending Conditional Use Permit Application subject to the Oregon Department of Environmental Quality. With this requirement affect on air quality should be minimized. Subject to the requirements for reclamation and DEQ requirements this proposal is found to be consistent with Goal 6.

Goal 7 - Areas Subject to natural Disasters and Hazards

To protect life and property from natural disasters and hazards.

Finding: According to the publication " Geologic Hazards of

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Parts of Northern Hood River, Wasco, and Sherman Counties, Oregon," this proposal is not within a geologic hazards area. The site is within the flood plain of both the White River and Tygh Creek and is within the " Flood Hazard Zone" and Environmental Protection District 1 (Flood Hazard Overlay) of Wasco County. The purpose of the Flood Hazard Overlay is to minimize public and private losses due to flood conditions in these areas. This includes methods of reducing flood losses including: "Controlling the alteration of natural flood plains, stream channels ...which help accommodate or channel flood waters ; and Controlling filling, grading, dredging, and other development which may increase flood damage" Chapter 22, Flood Damage Prevention of the Wasco County Land Use and Development Ordinance, (Section 22.020). According to the Federal Emergency Management Agency (FEMA), the County flood insurance rates would not be affected by this proposal (personal conversation with the Land Conservation and Development staff, Steve Ohlman).

The Department of Geology and Mineral Industries report of on-site inspection of the subject property, dated February 17, 1993 (Exhibit D) addresses a concern expressed by staff about the potential that this operation cause a relocation of the White River channel. The DOGAMI report addresses this concern. The report states that this is "unlikely" and goes on to explain why; page 2, paragraph 3 of the report states..."the maximum depth of the proposed excavation is 1' higher than the surface of the normal water level of the White River. Therefore, if there were over topping of the riverbank, the excavation would not cause a relocation of that channel. When the water recedes, the course of the river will be unchanged." The report identifies an area of 75' along the river which is experiencing some erosion and recommends stabilizing this bank with willow cuttings to further insure that there will be no erosion of the channel that would contribute to potential stream relocation. The report goes on to state that by the time phase two of the proposed operation begins this bank should be stabilized. The DOGAMI report does not make this a condition of their permit. A condition for additional slope stabilization of this area with willow cuttings as recommended by DOGAMI should be made part of the pending CUP-92-128-WWMF2-H. With these conditions the proposal would be consistent with Goal 7.

Goal - 8 Recreational Needs

To satisfy the recreational needs of the citizens of the state and visitors and to provide for the siting of necessary recreational facilities including destination

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resorts.

Finding: *Not applicable.* The application is for an industrial use in an industrial zone.

Goal- 9 Economic Development

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Finding: *This proposal is for the commercial sale of a mineral resource. It will provide material necessary for construction projects. As such, it can be seen as an opportunity vital to the welfare and prosperity of Oregon's citizens. The proposal complies with Goal 9.*

Goal 10 - Housing

To provide for the housing needs of citizens of the state.

Finding: *Not applicable.*

Goal 11 - Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development

Finding: *Not applicable.*

Goal 12 - Transportation

To provide and encourage a safe, convenient and economic transportation system.

Finding: *Not applicable.*

Goal 13 - Energy Conservation

To conserve energy.

Finding: *Not applicable.*

Goal 14 - Urbanization

Finding: *Not applicable.*

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Criterion C. There is substantial proof that the proposed amendment will not be detrimental to the spirit and intent of such goals.

Findings: The discussion of the Goals and findings provide substantial proof that the proposed amendment will not be detrimental to the spirit and intent of the Goals. As such, the proposal is in compliance with this criterion.

Criterion D. A mistake in the original Comprehensive Plan occurred or changes in the character of the neighborhood have occurred which warrant the proposed amendment.

Findings: There is no indication that there was a mistake in original Comprehensive Plan to warrant the proposed amendment. A change in use has occurred in that the previous use was for Mountain Fir Lumber Company operation as their log storage deck. Mountain Fir Lumber has moved their operation from this site. The change in use warrants consideration of this proposed amendment. As such, the proposal is in compliance with this criterion.

Criterion E. There are factors which relate to the public need for healthful, safe and aesthetic surroundings and conditions.

Findings: The factor which relates to public need is the need for a construction materials within a reasonable haul distance for the south county. This proposal will fill that need. With a reclamation plan required as a condition of the pending Conditional Use Permit Application the health, safety, and aesthetic considerations of this proposal would comply with this criterion. Mining operations may be considered as incompatible with surrounding residential use. However, the residential uses have existed with past industrial operations. The proposed use is consistent with the past use and with the zone. As such, surrounding residential uses are aware of the industrial nature of this site. With conditions imposed for safety this proposal is consistent with criterion E.

Criterion F. There is proof of change in the inventories originally developed.

Findings: The previous use was as a log storage deck for Mountain Fir Lumber. As such there is no proof of change, nor reason to assume that there is a change in the original inventory.

Criterion G. Public need and justification for the amendment must be established based on special studies or other information .

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Findings: The applicant has stated that material from this site would in part be used for the Pacific Gas Transmission Pipeline Project. The project is described and documented in a report entitled PGT-PG&E Pipeline Expansion Project available at the Wasco County Planning Office. As such, the proposal is in compliance with Criterion G.

- CONCLUSIONS:
1. The request is for a Comprehensive Plan Amendment to add a mineral resource site to the county inventory.
 2. The Comprehensive Plan designation for the property on which the proposal is located is Medium Industrial Use, and the zone is "M-2". The proposal is a conditional use in this zone.
 3. With coordination and consistency with DOGAMI reclamation plan conditions, the request complies with the State of Oregon Statewide Planning Goals
 4. The request is found to be consistent with the spirit and intent of these goals.
 5. There was no mistake in the original plan.
 6. Public need will be met by this amendment in a safe aesthetic manner.
 7. This site was not originally identified on the county aggregate inventory list. If approved through this process it will be added to the county aggregate inventory list as a potential site.

RECOMMENDATION: Based upon the above findings of fact, staff recommends that the application by Jon Justeson for a Comprehensive Plan amendment to allow placement of a mineral resource site on the county inventory be approved.