



Coos County Planning Department
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PATTY EVERNDEN

PLANNING DIRECTOR

COOS COUNTY PLANNING COMMISSION
NOTICE OF LAND USE DECISION

August 9, 2007

FACTS OF THE MATTER

The applicant, Oregon Resources Corporation (“Applicant”), submitted an application for a conditional use permit (HBCU-07-05) on April 17, 2007, (“Application”). Pursuant to Coos County Zoning and Development Ordinance (“CCZLDO”) Section 5.2.600, the Coos County Planning Department (“Planning Department”) deferred an administrative decision to a hearings body decision.

The Application was heard at a public hearing on June 28, 2007. The hearing was duly noticed on June 8, 2007, pursuant to CCZLDO Section 5.7.100. At the conclusion of this hearing, the record was left open until the following dates: July 6, 2007, for additional written testimony, July 16, 2007, for written rebuttal testimony, and July 23, 2007, for final written argument by the Applicant. The Commission deliberated and reached a final decision on the Application at a public hearing on August 2, 2007.

The Application is for a conditional use permit to allow the construction of a full-scale mineral sands processing plant (“Plant”) on property located in Coos County, Oregon, as more particularly described in the Application (“Property”). The Property is zoned Coos Bay Estuary Management Plan (CBEMP), Segments 28A-Development Aquatic (28A-DA), 36-Urban Water-Dependent (36-UW) and 38-Urban Development (38-UD). The processing of mineral resources is an industrial use, conditionally allowed within these CBEMP segments.

Pursuant to CCZLDO Sections 4.5.616, 4.5.691, 4.5.696, a proposal within the 28A-DA, 36-UW and 38-UD zoning districts must comply with the following CBEMP policies: 16, 16a, 17, 18, 23, 27, 49, 50, 51 and Special Condition #4.

FINDINGS TO THE CRITERIA

I. Coos County Zoning & Land Development Ordinance (CCZLDO)

4.5.616 Special Condition for Industrial & port facilities in 28A-DA

If the use is water-related or non-dependent/non-related and does not require fill, findings must be made that the use is consistent with the resource capabilities and purposes of the management unit. Fill is not permitted for non-water-dependent uses.

Finding: The proposed use is water-dependent; therefore, this Special Condition does not apply.

III. Appendix 3, Volume II-CBEMP Policies:

#17 Protection of “Major Marshes” and “Significant Wildlife Habitat” in Coastal Shorelands

Finding: There are no inventoried sites; therefore, this Plan Policy does not apply.

#18 Protection of Historical, Cultural and Archaeological Sites

Finding: The subject property is in an area of cultural sensitivity. The Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians request they be contacted immediately if any known or suspected cultural resources are encountered during any phase of the work, and, that they be given at least 72 hours notice prior to any ground disturbing to allow a designated member of the Tribe to be present.

The applicant has repeated this information under their response to this Plan Policy.

#23 Riparian Vegetation and Streambank Protection

Finding: As a conditional use on the Property, the use is subject to Policy #23. Policy #23 encourages local governments to strive to maintain riparian vegetation within the Coos Bay Estuary through the riparian standards contained in CCZLDO Section 4.5.180. Such riparian standards restrict removal of riparian vegetation. As determined in the Staff Report, the Applicant does not intend to remove riparian vegetation and therefore the proposed use complies with Policy #23.

The record contains testimony alleging that dust resulting from the processing of mineral sands at the Plant may harm the riparian vegetation. Even if Policy #23 required an analysis of harm to riparian vegetation short of removal, the weight of the evidence demonstrates that dust from the Applicant’s operations will not harm the riparian vegetation. The processing will occur inside enclosed buildings and structures, significantly reducing the potential for dust at the Property. Furthermore, the Applicant’s operational protocols ensure that any dust resulting from the operations will be adequately controlled. Therefore, the Commission finds that the riparian vegetation and streambank along the Property will be maintained consistent with Policy #23.

#27 Floodplain Protection within Coastal Shorelands

Finding: Floodplain certifications for fill and new construction were completed in 2006. Therefore, this plan policy has been addressed.

#16 Protection of Sites Suitable for Water-Dependent Uses and Special Allowance for new Non-water-Dependent Uses in “Urban Water-Dependent (UW) Units”

Finding: The shoreland areas have urban zoning and the proposal is water-dependent; therefore, the proposal is consistent with this Plan Policy.

#16a Minimum Protected Acreage Required for County Estuarine Shorelands

Finding: The proposal would not remove shorelands from the County’s inventory of acreage available for water-dependent use; therefore, the proposal is consistent with this Plan Policy.

#49 Rural Residential Public Services

Finding: This Plan Policy does not apply.

#50 Rural Public Services

Finding: The property is currently served by public water and sewer.

#51 Public Services Extension

Finding: Public facilities currently serve the subject property.

DECISION

Based on the Facts of the Matter, Findings of the Criteria, staff report, and public testimony received, the Planning Commission unanimously voted to **APPROVE** application for a conditional use permit (HBCU 07-06) to allow the a full-scale mineral sands processing plant.

Please note the Commissioners Combs and Waterman recused themselves from the hearing.

CONDITIONS AND REQUIREMENTS

***** The following conditions and requirements must be met.**

1. The Applicant shall contact the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (“Tribe”) should known or suspected cultural resources be encountered during any phase of the development. The Applicant shall provide seventy-two (72) hours notice to the Tribe prior to ground-disturbing activity to provide an opportunity for a Tribal member to be present.
2. Dust shall be controlled pursuant to the operational protocols outlined in Dan Smith’s letter dated and submitted to the record on July 16, 2007 and in accordance with all required air quality permits and applicable regulations.
3. The Applicant shall comply with all requirements of applicable local, state and federal permits and regulations.

RIGHT TO APPEAL

The Planning Commission's decision is final unless appealed in writing to the Board of Commissioners within 15 days of the date final action was reduced to writing and mailed. This means any appeals filed after **August 24, 2007**, are not timely and will not be considered. Any notice of appeal pursuant to CCZLDO Section 5.8.223 shall be filed with the Department and shall be accompanied by a written statement of the grounds for the appeal and any required filing fee. Appeals before the Board of Commissioners are limited to the record and no additional testimony or evidence will be considered.

Questions regarding this decision need to be directed to the Coos County Planning Department at (541) 396-3121 or 756-2020, extension 210.

Sincerely,
COOS COUNTY PLANNING COMMISSION


Joann Hansen, Planning Commission Chair

JH/dd

C: Planning Commission
County Counsel
David Perry, DLCD
Applicant
Participants
File