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MEMORANDUM

TO: Marion County Hearings Officer

FROM: Marion County Planning Division/Alyssa Schrems

SUBJECT: Conditional Use 22-007

DATE: April 14, 2022

The Marion County Planning Division has reviewed the above-referenced application and offers the following comments:

FACTS:

1. Application of Daniel and Heather Loscar for a conditional use permit to operate an aggregate site on a 27.15-acre parcel in a UT-5 (Urban Transition) zone located in the 4600 block of Croisan Creek Rd S, Salem (T8S, R3W, Section 8C, Tax Lots 2800 and 200). The subject property is within the Salem Urban Growth Boundary (UGB) and designated Developing Residential in the Salem Area Comprehensive Plan (SACP). The property's current UT zoning is under the jurisdiction of Marion County.

2. The property is located on the west side of Croisan Creek Road S, approximately 0.25 miles north of the intersection of Croisan Creek Road S and Kuebler Road S. The parcel has an elevation change of approximately 420 feet from west to east. The property was previously used as a quarry and a shear rock face remains from when the quarry activity was discontinued. The property was previously the subject of CU96-016, CU97-079, CU01-052, and CU05-049, all of which were to expand a pre-existing quarry use. As part of these reviews, it was determined that tax lots 200 and 2800 together constitute one legal unit of land for planning purposes.

3. Abutting properties to the north and east are zoned UT-5 and either developed with single family residences or are undeveloped. Abutting properties to the west are zoned Acreage Residential (AR) and are small sized rural lots developed with homesites. Abutting properties to the south are in the city limits of Salem, zoned for residential use, and are developed with homes.

COMMENTS:

4. Area Advisory Committee #1 commented that they did not support adding an aggregate site on Croisan Creek Road due to the number of nearby homes and due to the road conditions. They state that blasting and heavy large trucks in this location "seems really dangerous and disruptive". They also state that the turn from Croisan Creek Road "onto Keebler is already dangerous, due to the steep hill to the west". Sprague High School is very close to the proposal, due to the steep hill to the west, any gravel trucks would have to travel east on Kuebler, right past the entrance to Sprague.

Surrounding Property Owners expressed concern about the increased truck traffic on the road and whether Croisan Creek Road can withstand the additional heavy weight loads without serious repair and upgrades. They also expressed concern regarding noise and “other environmental concerns”. Neighbors also state that both Croisan Creek Road and Kuebler are in the city and would be heavily impacted by a rock quarry.

Salem Fire Department commented that the application indicates the desire to have future residential development. Fire department access and water supply will be required to comply with the Oregon Fire Code at the time of development.

City of Salem, Planning Division commented that the property is designated Developing Residential on the Salem Comprehensive Plan. If annexed into the city at a future date, the proposed use would be considered nonconforming under SRC 270.005.

Department of Geology and Mineral Industries (DOGAMI) commented that the Conditional Use Permit for DOGAMI ID 24-0066 should be submitted for DOGAMI review and concurrence prior to additional mining taking place.

Land Development Engineering and Permits (LDEP) submitted the following comments:

ENGINEERING CONDITIONS

***Condition A** - Prior to commencement of reclamation activities, under a permit from PW Engineering, remove a 6-inch diameter water pressure pipe, related to mining operation and if still present, that had been identified to run through an existing 24-inch diameter stormwater drainage culvert under Croisan Creek Road situated approximately 180 feet north of the south property line.*

This stipulation had been stated in prior case #CU01-052, but there is no county record of it having been removed.

***Condition B** - Prior to commencement of reclamation activities, provide an acceptable erosion prevention plan indicating how Higgins Creek tributary to Croisan Creek will be protected from negative impact of the reclamation operation.*

***Condition C** - Prior to commencement of reclamation activities, acquire an Access Permit, and under the Permit install a construction entrance to the main (south) property entrance where trucking will take place.*

Access is typically an Engineering Requirement; however, it is being elevated to Condition status as a matter of timing for completion.

***Condition D** – Prior to commencement of reclamation activities, coordinate with PW Engineering Traffic Engineering section for placement of any safety related roadway temporary signing that may be deemed appropriate such as “Trucks Entering Roadway”.*

ENGINEERING REQUIREMENTS

E. If the existing north access will continue to be utilized, then under the Access Permit noted in Condition C, the south access shall be improved to PW Engineering standards. If the access will no longer continue to be used, then it shall be permanently closed.

F. It is the responsibility of the Applicant to preserve and protect the current Pavement Condition Index (or PCI) rating and the structural integrity of adjacent county roads to the satisfaction of Marion County Public Works during transport of materials and construction activities. Failure to preserve and protect the road may result in the applicant being responsible for replacing or reconstructing the damaged road at his/her own expense.

ENGINEERING ADVISORY

G. Applicant is advised to videotape Croisan Creek Road prior to commencement of hauling to verify pre-hauling road surface conditions, beginning from the property to either River Road or Kuebler Road, whichever route the trucks will take.

Other contacted agencies either had no comment or stated no objection to the proposal.

STAFF FINDINGS AND ANALYSIS:

5. Surface and subsurface mining is a conditional use in the UT zone under MCC 16.13.020(C). It is subject to the criteria in 16.13.030(A-D), 16.32.200, and 16.40.020.
6. The following criteria apply to all conditional uses in the UT zone (16.13.030(A-D)).

A. *The use will not increase traffic beyond the capacity of the existing roads.*

The applicant states that there will not be any significant traffic impact from the proposed use. Additional evidence provided by the applicant states that there will be an estimate of 4,000 dump truck loads of material removed by the quarry over approximately 30-45 working days. Comments received from surrounding property owners and the Area Advisory Committee (AAC) expressed concerns regarding the additional heavy truck traffic impact on Croisan Creek Road and Kuebler Boulevard. Comments from surrounding property owners also expressed concerns regarding the impact of the proposed truck traffic on Sprague High School, which is located 0.21 miles from the intersection of Kuebler Boulevard and Croisan Creek Road. The applicant will have a chance to discuss this in further detail at the hearing.

B. *If the use will remain after the area is urbanized it will be located in such a manner than any significant unused portion of the property has adequate development options.*

The applicant does not address if the use is proposed to continue after the area is urbanized. The applicant states that they are requesting this conditional use permit in order to remove a portion of the “high wall” and to allow for terracing and to reduce safety concerns for future residential development of property. In the previous approvals to operate the quarry, a five-year limit was imposed at the request of the City of Salem. Marion County Planning recommends that the operation of the quarry should again be limited to five years if approved in order to prevent conflicts with surrounding property owners upon annexation. The City of Salem commented that upon annexation the quarry use would be considered nonconforming pursuant to SRC 270.005. The applicant will have a chance to discuss this in further detail at the hearing.

C. *The use and related structures and improvements meet the development standards of the most restrictive zone consistent with the applicable Comprehensive Plan designation; or the city concurs and, if the city requests, conditions are imposed that require the structures and improvements to be brought into conformance with city zoning regulations upon annexation.*

The applicant states that the intent of obtaining the conditional use permit is to allow them to remove the “high wall” on the property in order to allow for terracing and to reduce safety concerns for future residential development on the property. Residential development on the property is allowed under the current zoning.

The most restrictive zone consistent with the Developing Residential Comprehensive Plan

designation is Single Family Residential (RS). A rock quarry is not an allowed or permitted use in the RS zone. City of Salem commented that the property is designated Developing Residential on the Salem Comprehensive Plan. If annexed into the city at a future date, the proposed use would be considered nonconforming under SRC 270.005. Based on these facts, this criterion does not appear to be met.

- D. *The most restrictive zone used in the applicable Comprehensive Plan designation lists the proposed use as a permitted or conditional use; or the city concurs and, if the city requests, conditions are imposed which require the use be brought into conformance with city zoning regulations upon annexation.*

The property is zoned UT with an underlying Comprehensive Plan designation of Developing Residential in the Salem Area Comprehensive Plan (SACP). Pursuant to MCC 16.01.030, the most restrictive zoning classification for the Developing Residential Comprehensive Plan designation is RS. A rock quarry is not a permitted or conditional use in the RS zone. The City of Salem Planning Department commented that the property is designated Developing Residential in the SACP. If annexed into the city at a future date, the proposed use would be considered nonconforming under SRC 270.005. Based on these facts, this criterion does not appear to be met.

7. The following criteria apply to all conditional uses in the Urban area under MCC 16.40.020.

- A. *The use is listed as a conditional use in the zone, or is otherwise identified as a conditional use and is consistent with the intent and purpose of the zone and the provisions that authorized consideration as a conditional use.*

Exploration, mining, and processing of geothermal, or other subsurface resources not used exclusively in conjunction with farm or forest management (including surface mining) is allowed as a conditional use in the UT zone pursuant to 16.13.020. Based on these facts, this criterion appears to be met.

- B. *The parcel is suitable for the proposed use considering such factors as size, shape, location, topography, soils, slope stability, drainage, and natural features*

The subject property was previously used as a quarry which was discontinued prior to August 20, 2011, as required by the conditions listed in Conditional Use 05-49 (CU05-049). The property is 27.15 acres in size. The property appears suitable for the proposed use as there is still a rock face that can be quarried. The rock face is located near the center of the property which provides a natural separation between the proposed quarry and the surrounding properties. Based on these facts, the parcel appears suitable for the proposed use.

- C. *The proposed use, as conditioned, will not substantially limit, impair, or preclude the use of surrounding properties for the uses permitted in the applicable zone.*

The subject property is surrounded on all sides by land intended for residential use. Surrounding property owners expressed concerns regarding dust, noise, effects to the neighboring school, and traffic. The applicant proposed hours of operation from 7:00 am to 4:00 pm, however there is a school located 0.23 miles away (straight line distance). In order to mitigate the impact of the operation on school activities and surrounding property owners, staff recommends the hours of operation be modified to 9:00 am to 6:00 pm. These hours of operation are intended to not interfere with morning school traffic or sleep, while the 6:00 pm end time allows for an 8-hour workday.

In order to address potential dust, the applicants shall be required to prepare a dust control plan to be reviewed by the Planning Director prior to operation of the site if approved. This plan must address dust created by blasting and trucks, as well as any other major sources of dust.

In order to address concerns regarding noise, the applicant shall be required to plant a vegetative buffer, and/or maintain existing vegetation as applicable, in order to dampen sound created by the property. The applicants shall also be required to provide notification of blasting to property owners within 2000 feet of the subject property a week prior to blasting. This notification must contain the date and time at which blasting will occur, as well as a map of the notification area with the subject property clearly marked. Planning recommends the 2,000-foot buffer to make sure any property owners who may be impacted by the blasting are provided with sufficient warning (map included as Exhibit A). Based on these facts, as well as compliance with proposed conditions of approval, this criterion appears to be met.

- D. *The proposed use, as conditioned, will not have a significant adverse effect on air or water quality.*

The applicant states that they will use a water truck to control any dust created by the operation. As a condition of approval, the applicant shall be required to prepare a dust control plan as detailed earlier, as well as obtain any required permits through DEQ for air quality when operating the quarry. The applicant does not discuss potential impacts on water quality. Staff recommends best management practices such as silt fencing in areas where runoff could impact stream health. The applicant will have the opportunity to discuss this further at the hearing.

- E. *Adequate public and utility facilities and services to serve the use are available or will be made available prior to the establishment of the use.*

The applicant does not indicate that any public or utility facilities will be required by the quarry. The proposed use could be served by well as septic, subject to review. This criterion appears to be met.

8. *The following standards apply to all surface mining sites in the Urban area (MCC 16.32.200(B-D)).*

- B. *Reclamation Plan Required – Other Conditions. As a plan for reclamation of the surface mining site which, at a minimum, satisfies the requirements of OAR 632-030-025 (except that the word “hearings officer” shall replace the word “department” as used therein) shall be submitted with an application for conditional use approval for a surface mining operation. In addition to conditions relating to the reclamation of the site, conditions as to conduct of the surface mining operation otherwise permitted under Chapter 16.40 MCC may be imposed. Compliance with an approved reclamation plan shall be a condition of approval.*

The applicant submitted the reclamation plan used for the quarry previously. The reclamation plan was previously approved by DOGAMI to meet the requirements of OAR 632-030-025. Based on these facts, this criterion is met.

- C. *Bond or Security Deposit Required. As a condition of approval, the applicant shall file with the county a bond or security deposit in a form approved by county legal counsel conditioned upon fulfilling any conditions of approval and requirements of this section. The bond may be in addition to, or the same bond as required by the Oregon Department of Geology and Mineral Resources.*

A bond or security deposit can be made a condition of approval. Staff recommends the bond be the same bond required by DOGAMI. Based on the proposed conditions, this criterion is met.

D. Failure to Maintain Compliance.

1. The operator of a surface mining operation under conditional use approval shall continuously operate and maintain the site within the terms and conditions set forth in this section and the conditional use approval.

2. In the event any of the conditions prescribed pursuant to this section or described in ORS 517.860(2)(a) through (d) (the period of time mentioned in paragraph (a) of such subsection being the compliance period specified in a written notice from the zoning administrator to correct deficiencies), the county may cause the required work to be done and the cost thereof, if not paid by the owner, operator, or surety, to be assessed as a lien against the property.

Compliance with this section can be made a condition of approval. Based on this fact as well as compliance with the conditions of approval, this criterion is met.

CONCLUSION:

9. Staff recommends denial of the proposal. Should the hearings officer grant the applicant's request for the conditional use to operate an aggregate site, the Planning Division recommends the following conditions be applied:

- A. This approval is valid until [specific date, 2027] unless it is renewed under the conditional use process prior to that date.
- E. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
- F. The hours of operation for the quarry shall be 9:00 am to 6:00 pm, Monday through Friday, excluding major holidays.
- G. Notifications of blasting shall be provided to all property owners within 2,000 feet of the subject property a week prior to blasting. This notification must contain the date and time at which the blasting will occur, along with a map of the notification area with the subject property clearly marked. A notice shall also be provided to the Planning Department.
- H. A dust control plan shall be prepared by the applicants and reviewed by the Planning Director prior to operation of the aggregate site. This plan should address dust created by trucks and by blasting, as well as any other major sources of dust.
- I. The applicant shall obtain all permits required by Oregon Department of Environmental Quality (DEQ).
- J. A vegetative buffer shall be planted or maintained along the property lines.
- K. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following conditions have been satisfied:

Condition A - Prior to commencement of reclamation activities, under a permit from PW Engineering, remove a 6-inch diameter water pressure pipe, related to mining operation and if still

present, that had been identified to run through an existing 24-inch diameter stormwater drainage culvert under Croisan Creek Road situated approximately 180 feet north of the south property line.

Condition B - Prior to commencement of reclamation activities, provide an acceptable erosion prevention plan indicating how Higgins Creek tributary to Croisan Creek will be protected from negative impact of the reclamation operation.

Condition C - Prior to commencement of reclamation activities, acquire an Access Permit, and under the Permit install a construction entrance to the main (south) property entrance where trucking will take place.

Condition D – Prior to commencement of reclamation activities, coordinate with PW Engineering Traffic Engineering section for placement of any safety related roadway temporary signing that may be deemed appropriate such as “Trucks Entering Roadway”.

- L. The operation shall be in continuing compliance with all applicable DEQ and DOGAMI regulations including the redevelopment plan.