

CURRY COUNTY BOARD OF COMMISSIONERS

MEMORANDUM

To: Curry County Board of Commissioners

From: David Pratt, AICP
Planning Director

Meeting Date: December 14, 2011

Subject: Land Use Decision A-1104: Appeal of Planning Commission Decision on September 22, 2011, approving a request for a Conditional Use Permit (AD-1106) for gravel mining in the Forestry-Grazing (FG) zone

I. PARTY & PROPERTY INFORMATION

Appellants: Bob Manners, Wilbur & Bonnie Andreson, Steven & Linnez Zents, Curry Sportsfishing Association & City of Gold Beach

Property Owner: Gold Beach Investment Properties

Agent/Applicant: Tidewater Contractors, Inc.

Address: 95858 Jerry's Flat Road

Assessor Map Number: 3614-16; Tax lot 302

Zoning: Forestry Grazing (FG) zone, Shoreland (SO) overlay & Natural Hazard (NH) floodplain overlay

II. SUMMARY OF APPLICANT'S REQUEST & APPELLENT'S APPEAL

Tidewater Contractors, Inc. ("applicant") requests a renewable three-year conditional use permit to mine up to 60,000 tons (36,000 cubic yards) of aggregate each year on a portion of the subject property located in the Forestry-Grazing (FG) zone with Shoreland (SO) and Natural Hazard (NH) floodplain overlays. The Planning Commission approved applicant's request on September 22, 2011. The Planning Commission granted applicant a 3-year conditional use permit to mine aggregate in an amount not to exceed the greater of the amount approved by DOGAMI or 40,000 tons per year. See Planning Commission's Order, Attachment A.

Bob Manners, Wilbur and Bonnie Andreson, Steven and Linnez Zents, Curry Sportsfishing Association and the City of Gold Beach (“appellants”) appealed the Planning Commission’s decision (Attachment B). This memorandum discusses appellant’s reasons for appeal as outlined in Attachment B.

Because of the appeal, Curry County Zoning Ordinance (“CCZO”) obligates the Board of Commissioners to conduct a de novo review of applicant’s request. The decision criteria applicable to the request and applicant’s compliance with such are discussed in Section V of the Curry County Planning Commission Staff Report dated August 18, 2011, included herein as Attachment C (“Staff Report”). The Board has the authority to amend, reverse or affirm the Planning Commission’s decision.

IV. BACKGROUND

The Planning Director deemed applicant’s application for a conditional use permit complete on July 28, 2011. After initial review of the request, the Planning Director referred the matter to the Planning Commission pursuant to CCZO Section 2.090(3). The Planning Commission held a hearing on the matter on August 18, 2011, and on September 22, 2011, voted to approve the application.

A more detailed background regarding the subject property and history of the previous land use actions can be found under Section IV of the Staff Report.

V. ANALYSIS

Appellants present the following arguments in support of their appeal:

1. Appellants argue that applicant has not met its burden of proof under CCZO Section 2.140(5)(a), which provides that the “more drastic the change or the greater the impact of the proposal in an area, the greater is the burden on the proponent.” Appellants argue that applicant’s request to mine up to 60,000 cubic yards¹ of aggregate is both a drastic change and will have an immense impact on the environment and existing uses.

Response: The level of evidence the Board requires from applicant to prove compliance should increase relative to the Board’s determination of the possible impact the mining use will have on the property and surrounding area. The Board’s findings should explain why it believes applicant did or did not meet its burden of proof.

2. Appellants argue that applicant did not satisfy the requirement in CCZO Section 7.040(9)(a)(2), which requires applicant to submit sufficient information for the Board to review the proposed use and set siting standards related to the “impact of the proposed use on water quality, water flow, or fish habitat on affected rivers or

¹ Appellants appeal notice mistakenly cites “60,000 cubic yards.” Applicant’s request is for up to 36,000 cubic yards (60,000 tons).

streams.” Specifically, appellants argue there is not enough information on ground water depth, trenching methods and potential for toxic contamination.

Response: This criterion does not impose certain standards related to water quality, water flow, or fish habitat on affected rivers or streams. Instead, the Board must determine whether applicant submitted sufficient evidence into the record in order to review the proposed use and set reasonable standards given the circumstances. Applicant submitted extensive evidence related to this criterion.² This evidence is discussed in the Staff Report under CCZO Section 7.040(9)(a)(2) (pages 12-14), CCFDPO Section 9.1-2 (page 24), Comprehensive Plan Goal 5(D)(#4) (page 27), Goal 7(#7) (page 29) & Goal 16(B)(#2) (page 32).

Specifically, applicant estimates the ground water depth is 7 feet based on prior mining activity. Applicant describes its trenching methods and its intent to excavate only above ground water level in the 2011 DOGAMI Application (Attachment D):

The general plan for the mine operation includes pre-stripping of the overburden by pushing with a dozer or front-end loader, followed by the excavation of the sand and gravel resource from trenches and side-hill cuts using a tracked excavator or front-end loader. This was the mine plan that was followed during the 2010 mining and is illustrated in Figure I-4. The trenches will be excavated to a depth determined by the level of the ground water table at the time of excavation. All excavation will be done above the ground water table as located in the trench at the time of excavation. The static water level in the monitor well will be used as a reference to estimate where the level should be expected in the excavation. As the trench is being excavated, the first sign of standing water in the bottom of the trench will define the water level. Once this is identified, the operator can then reduce the depth so that the excavation will always remain above that level. Based on observations during the 2010 excavation, daily water level fluctuations were not noted until an unexpected early rain storm brought the level up, resulting in standing water within the trench. The intent is to not excavate below the top of the ground water table, but an early rain storm could bring the ground water level up, resulting in some standing water in the bottom of the excavation that has not yet been backfilled. It is the intent to minimize the possibility of this happening so every effort will be made to at least partially backfill the trench closely behind the excavation. Backfill material will consist of a mixture of overburden silt, sand and gravel that was removed from the excavation area prior to mining.

² Related evidence to can be found at Attachment A-I (pages 6-8) of the Staff Report, Attachment A-II (pages 4-5) of the Staff Report, Attachment A-III (pages 15-23, 26-29, 56-58) of the Staff Report, Attachment D of the Staff Report, Narrative Summary of the DOGAMI Amended Operating and Reclamation Plan (“2011 DOGAMI Application”) and Applicant’s Final Argument dated September 15, 2011.

The proposed trenches are also described under Section 2.200 of the Staff Report (page 4).

Staff assumes the “potential for toxic contamination” refers to the existing pollution on the site and the possibility that the mining might cause the contamination to reach the Rogue River. Applicant submitted information regarding the existing site pollution and proposed mitigation measures. These are discussed in the Staff Report under CCZO Section 7.040(9)(a)(2) (pages 12-13).

3. Appellants argue that applicant did not satisfy the requirement in CCZO Section 7.040(9)(a)(3) because the application does not contain sufficient information related to overall land stability, vegetation, wildlife habitat and land or soil erosion. Specifically, appellants argue that there is not sufficient information regarding the proposed trenching mining method as it relates to soil erosion and land stability.

Response: Again, this criterion only requires the Board to make a determination about whether applicant submitted sufficient information to review the proposed use and set siting standards; it does not contain any bright line rules regarding overall land stability, vegetation, wildlife habitat and land or soil erosion. Evidence related to these subjects can be found in Attachment A-II (pages 5-6) of the Staff Report, Attachment A-III (page 26) of the Staff Report, the 2011 DOGAMI Application and Applicant’s Final Argument. The Staff Report discusses the evidence under CCZO Section 7.040(1)(a) & (c) (pages 8 & 9), CCZO Section 7.040(9)(a)(2) & (3) (pages 12-15), and Goal 16(B)(#2) (page 32).

4. Appellants argue that applicant did not satisfy the requirement in CCZO Section 7.040(9)(a)(5) because the application does not contain sufficient information regarding rehabilitation of the land upon termination of the mining activity. Appellants argue that additional information is needed on trench mining, as opposed to scalp mining, to meet the criteria.

Response: This criterion, unlike the ones discussed above, has a definitive standard. It requires applicant to demonstrate that the proposed rehabilitation at least meets the requirements of state permits. In addition, the Board has to determine whether applicant submitted sufficient information regarding rehabilitation of the land. Evidence regarding this criterion can be found in Attachment A-I (pages 3-5 & 14) of the Staff Report, Attachment A-III of the Staff Report (pages 34-54 & 55-60), the 2011 DOGAMI Plan and Applicant’s Final Argument. The Staff Report discusses rehabilitation under CCZO Section 2.200 (page 4), CCZO Section 7.040(1)(a) and CCZO Section 7.040(9)(a)(2), (3) & (5) (pages 8 & 12-16).

5. Appellants argue that applicant did not satisfy the requirement in CCZO Section 7.040(9)(c)(1) and (2) because the application “does not demonstrate that the mining activity cannot be sited on an alternative site;” and applicant has not “sufficiently identified conflicting economic, social, environmental, and energy consequences and developed methods to resolve the conflict.”

Response: The CCZO does not require applicant to “demonstrate that the mining activity cannot be sited on an alternative site.” CCZO Section 7.040(9)(c) only requires applicant to provide findings regarding the existing uses on lands within a 250-foot area surrounding the proposed site. Applicant provides this information in its Summary of Findings, Attachment A-II (pages 6- 7) to the Staff Report. The criteria requires the Planning Commission, or in this case the Board, to evaluate any potential conflicting uses indentified by the applicant with regards to the following two factors: (1) the possibility of alternative sites for the mining activity, and (2) the economic, social, environmental and energy consequences of any conflicting uses, and methods developed to resolve the conflicts. It does not require the Board to find that there is no alternative site for the mining activity. These factors are discussed under CCZO Section 7.040(9)(c)(1) of the Staff Report (pages 17-21).

6. Appellants argue that applicant did not satisfy the requirement in CCZO Section 7.040(15)(b) because the application does not contain affirmative findings that the proposed use satisfies a need that cannot be satisfied in an upland location.

Response: CCZO Section 7.040(15)(b) requires affirmative findings that the proposed use satisfies a need that cannot be satisfied in an upland location only if there are not already findings regarding the use in the Comprehensive Plan. As discussed in the Staff Report under CCZO Section 7.040(9)(c) (pages 17-18), the Comprehensive Plan contains findings regarding the importance of aggregate mining along rivers and streams. In addition, applicant’s specific site was adopted as a significant Goal 5 Aggregate Resource site on the Comprehensive Plan maps. These findings in the Comprehensive Plan are probably sufficient to meet this criterion. Applicant also presents findings regarding this requirement in Attachment A-II of the Staff Report (pages 7-8). The Board will need to determine if the Comprehensive Plan findings alone, or in addition to the applicant’s findings are sufficient to satisfy this criterion.

7. Under the heading “Statewide Planning Goal 6,” appellants argue that the application does not demonstrate (1) that it will not violate state and federal environmental quality standards, (2) that it will not violate “Total Maximum Daily Loads for the Rogue River,” and (3) compliance with all federal laws, including the Clean Water Act and the Endangered Species Act.

Response: As a preliminary matter, the Statewide Planning Goals are not decision criteria for the present application. The Statewide Planning Goals express the State's policies on land use and related topics. They are applied by the County through the adopted Comprehensive Plan and implemented in the form of local zoning ordinances.

The Board should adopt findings and impose conditions adequate to demonstrate that the proposed mining activity is consistent with the Comprehensive Plan policies under Goal 6 and related zoning regulations. The Staff Report discusses the proposed land use with regard to Goal 6 and recommended conditions, including a condition requiring applicant

to comply with all applicable federal, state and local regulations, under CCZO Section 7.040 (pages 8-22) and Goal 6 of the Comprehensive Plan (page 28).

8. Appellants argue that applicant has not demonstrated compliance with Comprehensive Plan policies for Goals 5, 6, 8 because “it has not demonstrated the benefit of aggregate extraction, has not demonstrated that it will not negatively impact water resources, and ha[s] not demonstrated that it will not conflict with residential development in the area.”

Response: The Board must determine whether the proposed use, with conditions of approval, is consistent with Comprehensive Plan policies for Goals 5, 6 and 8. Consistency with these policies and recommended conditions of approval is discussed in the Staff Report (pages 24-30). In addition, the benefit of aggregate extraction is discussed in the Comprehensive Plan under Goal 5.

VI. CONCLUSION

The issue before the Board is applicant’s request for a conditional use permit to mine aggregate at the subject property. The Board should consider all information submitted into the record and adopt a motion to either:

1. **AFFIRM** the Planning Commission’s decision and **APPROVE** the request filed by Tidewater Contractors, Inc. to issue a conditional use permit to mine aggregate on property identified as Assessor Map No. 3614-16; Tax lot 302; or
2. **REVERSE** the Planning Commission’s decision and **DENY** the request filed by Tidewater Contractors, Inc. to issue a conditional use permit to mine aggregate on property identified as Assessor Map No. 3614-16; Tax lot 302.

If the Board approves the request, we recommend the following conditions of approval:

1. Mining activities shall be limited to the areas identified as years 1 and 2 on the attached Figure 1, unless and until applicant receives an approved jurisdictional determination from COE or DSL for the entire proposed mining area. Applicant shall provide the Planning Division with a copy of the approved jurisdictional determination prior to any mining activities outside the previously approved areas.
2. The riparian corridor of seventy-five (75) feet from top of bank shall be maintained at all times.
3. All permits and licenses from other agencies including, but not limited to, DEQ, ODFW, FEMA and DOGAMI that are necessary for development, the operations approved herein, and the equipment used in these operations, shall be obtained prior to initiating any activity approved herein and shall be kept current as necessary. All

operations approved herein shall be conducted as required by these permits and applicable regulations.

4. Subject to the approval of ODFW, hours of operation for the site shall be 8 a.m. to 5 p.m. November through March, and 8 a.m. to 6 p.m. April through October. Hours of operation shall not include Saturdays, Sundays, or the following holidays:

- New Year's Day on January 1
- Presidents Day on the third Monday in February
- Memorial Day on the last Monday in May
- Independence Day on July 4
- Labor Day on the first Monday in September
- Thanksgiving Day on the fourth Thursday in November
- Christmas Day on December 25

5. All roads within the boundaries of the subject property utilized in connection with this operation must be surfaced with rock prior to initiation of the operation and must be sprayed with water to control dust if it becomes a visible problem. For the purposes of this request, a visible problem shall be defined as dust rising more than 6 feet above the surface of the road caused by any vehicles or equipment associated with the mining or transport of aggregate on site.

6. Surface mining equipment shall be maintained and operated in a manner as to minimize noise, vibration, or dust which is injurious or substantially annoying to persons living in the vicinity.

7. As instructed by ODFW, leave areas with overburden and vegetation shall be constructed from the mining removal; black cottonwood cuttings shall be planted during the backfill phase of mining; noxious weed monitoring and removal shall be arranged with Lower Rogue/South Coast Water Council; mining activities shall be limited to periods approved by the ODFW.

8. Each year applicant will submit its proposed mining plans and production quantity to ODFW for approval prior to conducting any mining operations. After the conclusion of mining operations for the year, applicant shall invite ODFW to the site to evaluate the effectiveness of the plan and propose any modifications. Applicant will implement any recommendations made by ODFW within the time periods recommended by ODFW. Applicant shall provide the Planning Division with a written narrative of any ODFW recommendations.

9. The amount of aggregate authorized under this permit shall not exceed the greater of the amount approved by DOGAMI or 40,000 tons per year. The maximum foot print of each year's removal area shall be no larger than the area indicated on Applicant's Narrative Summary of the Operating and Reclamation Plan dated May 13, 2011, Figure I-3 as "year 1 mining area."

10. No mining or processing of aggregate resources shall occur within 3,500 feet of the water supply intake for the City of Gold Beach.
11. Applicant shall not pump water from trenches created by the mining activities.
12. Applicant shall install a groundwater monitoring well in the proposed mining area.
13. Excavation operations shall be halted if evidence of ground contamination or of dumped material from the former mill site operation is exposed during mining activity.
14. The term of this approval is for a period of three (3) years from the date of the final order.
15. Applicant shall submit written reports to the Planning Commission demonstrating compliance with the conditions of approval herein on the first and second anniversary date of the final order. Failure to comply with all conditions of approval, or violations concerning the use approved herein, may result in nullification of this approval by County, after the applicants/property owners have been given due process. The Planning Director is authorized to investigate and determine if the conditions of approval are met, and to promptly report his findings to the Planning Commission. The Planning Commission may institute an immediate re-hearing of this matter if a violation of the conditions of approval is found to be valid.

Attachments

- A – Curry County Planning Commission Order adopted September 22, 2011
- B – Notice of Appeal dated October 11, 2011
- C – Curry County Planning Commission Staff Report and attachments dated August 18, 2011 and its attachments
- D – DOGAMI Amended Operating and Reclamation Plan dated May 13, 2011, revised July 14, 2011 without attachments
- E – Applicant’s Final Argument dated September 15, 2011.

BEFORE THE PLANNING COMMISSION
CURRY COUNTY, OREGON

In the matter of an Administration Decision)
regarding the request for a conditional use)
permit for sand and gravel mining within the)
Forestry Grazing (FG) zone with Shoreland)
(SO) and Natural Hazard (NH) floodplain)
overlays for property identified as Curry)
County Assessor Map No. 3614-16; Tax Lot)
302 (AD-1106))

FINAL ORDER
and Findings of Fact

ORDER in the **APPROVAL** of the application filed by Tidewater Contractors, Inc. on behalf of Gold Beach Investment Properties for a conditional use permit to mine sand and gravel within the Forestry Grazing (FG) zone with Shoreland (SO) and Natural Hazard (NH) floodplain overlays on property identified as Curry County Assessor Map No. 3614-16; Tax Lot 302. Said application (AD-1106) was filed pursuant to the Curry County Zoning Ordinance (CCZO).

BACKGROUND

This matter came before the Curry County Planning Commission as a referral by the Planning Director in accordance with CCZO Section 2.090(3)(d). Applicant requests a conditional use permit to mine sand and gravel within the Forestry Grazing (FG) zone with Shoreland (SO) and Natural Hazard (NH) floodplain overlays on property identified as Curry County Assessor Map No. 3614-16; Tax Lot 302.

The Planning Commission held a hearing on the matter as part of its regularly scheduled meeting on August 18, 2011, after giving public notice to affected property owners and publication in the local newspaper as set forth in Section 2.070. At the public hearing, the Planning Manager presented evidence and testimony in the form of the Staff Report dated August 11, 2011 (Attachment A). Mr. Robert Elayer presented the case for applicant and several members of the public testified in opposition to the application. The Planning Commission continued the matter until September 22, 2011, for deliberation and a decision, and moved to leave the record open for submittal of further evidence by all parties until September 1, 2011, rebuttal until September 8, 2011, and final argument by applicant until September 15, 2011.

On September 22, 2011, the Planning Commission reconvened as scheduled. After consideration and discussion of the evidence and testimony, and upon a motion duly made and seconded, the Planning Commission voted to approve applicant's request as proposed in Land Use File No. AD-1106.

DECISION CRITERIA

The Planning Commission adopts the decision criteria in the attached Staff Report.

FINDINGS OF FACT

Based on the oral testimony presented at the August 18, 2011 meeting, evidence submitted into the record and the findings in the Staff Report, the Planning Commission finds that applicant demonstrated compliance with the relevant decision criteria cited above.

DECISION

NOW THEREFORE LET IT HEREBY BE ORDERED that the Planning Commission **APPROVES** Land Use File No. AD-1106, an application filed by Tidewater Contractors, Inc. on behalf of Gold Beach Investment Properties for a conditional use permit for sand and gravel mining within the Forestry Grazing (FG) zone with Shoreland (SO) and Natural Hazard (NH) floodplain overlays for property identified as Curry County Assessor Map No. 3614-16; Tax Lot 302 subject to the following conditions:

1. Mining activities shall be limited to the areas identified as years 1 and 2 on the attached Figure 1, unless and until applicant receives an approved jurisdictional determination from COE or DSL for the entire proposed mining area. Applicant shall provide the Planning Division with a copy of the approved jurisdictional determination prior to any mining activities outside the previously approved areas.
2. The riparian corridor of seventy-five (75) feet from top of bank shall be maintained at all times.
3. All permits and licenses from other agencies including, but not limited to, DEQ, ODFW, FEMA and DOGAMI that are necessary for development, the operations approved herein, and the equipment used in these operations, shall be obtained prior to initiating any activity approved herein and shall be kept current as necessary. All operations approved herein shall be conducted as required by these permits.
4. Subject to the approval of ODFW, hours of operation for the site shall be 8 a.m. to 5 p.m. November through March, and 8 a.m. to 6 p.m. April through October. Hours of operation shall not include Saturdays, Sundays, or the following holidays:
 - New Year's Day on January 1
 - Presidents Day on the third Monday in February
 - Memorial Day on the last Monday in May
 - Independence Day on July 4
 - Labor Day on the first Monday in September
 - Thanksgiving Day on the fourth Thursday in November
 - Christmas Day on December 25

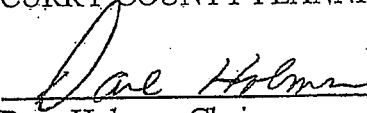
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5. All roads within the boundaries of the subject property utilized in connection with this operation must be surfaced with rock prior to initiation of the operation and must be sprayed with water to control dust if it becomes a visible problem. For the purposes of this request, a visible problem shall be defined as dust rising more than 6 feet above the surface of the road at any time any vehicles or equipment associated with the mining or transport of aggregate on site are operating.
6. Surface mining equipment shall be maintained and operated in a manner as to eliminate noise, vibration, or dust which is injurious or substantially annoying to persons living in the vicinity.
7. Leave areas with overburden and vegetation shall be constructed from the mining removal; black cottonwood cuttings shall be planted during the backfill phase of mining; noxious weed monitoring and removal shall be arranged with Lower Rogue/South Coast Water Council; mining activities shall be limited to periods approved by the ODFW.
8. Each year applicant will submit its proposed mining plans and production quantity to ODFW for approval prior to conducting any mining operations. After the conclusion of mining operations for the year, applicant shall invite ODFW to the site to evaluate the effectiveness of the plan and propose any modifications. Applicant will implement any recommendations made by ODFW within the time periods recommended by ODFW. Applicant shall provide the Planning Division with a written narrative of any ODFW recommendations.
9. The amount of aggregate authorized under this permit shall not exceed the greater of the amount approved by DOGAMI or 40,000 tons per year. The maximum foot print of each year's removal area shall be no larger than the area indicated on the attached Figure 1 as "year 1 mining area."
10. No mining or processing of aggregate resources shall occur within 3,500 feet of the water supply intake for the City of Gold Beach.
11. Applicant shall not pump water from trenches created by the mining activities.
12. Applicant shall install a groundwater monitoring well in the proposed mining area.
13. Excavation operations shall be halted if evidence of ground contamination or of dumped material from the former mill site operation is exposed during mining activity.
14. The term of this approval is for a period of three (3) years from the date of the final order. The permit may only be renewed upon the submission of evidence from DSL or COE of jurisdictional determination for the entire DOGAMI permit area.

15. Applicant shall submit written reports to the Planning Commission demonstrating compliance with the conditions of approval herein on November 6, 2012 and November 6, 2013. Failure to comply with all conditions of approval, or violations concerning the use approved herein, may result in nullification of this approval by County, after the applicants/property owners have been given due process. The Planning Director is authorized to investigate and determine if the conditions of approval are met, and to promptly report his findings to the Planning Commission. The Planning Commission may institute an immediate re-hearing of this matter if a violation of the conditions of approval is found to be valid.

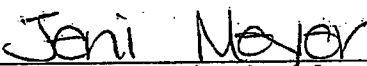
The Planning Commission reviewed and approved this written order in APPROVAL of Land Use File No. AD-1106 on this 22nd day of September, 2011.

CURRY COUNTY PLANNING COMMISSION



Dave Holman, Chair
Planning Commission

Approved as to Form:
David J. Pratt, Planning Director



By: Jeni Meyer, Planning Manager

Attachments:
A Figure 1

A-4



CURRY COUNTY DEPARTMENT OF PUBLIC SERVICES

PLANNING DIVISION

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Director

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c
A-1104/AD-1106

FOR OFFICE USE ONLY
DATE RECEIVED: **RECEIVED**
OCT 11 2011

NOTICE OF APPEAL

This is a request to appeal the following decision by Curry County

BY: *[Signature]*

Land Use Decision by the Curry County Planning Commission

Land Use Decision by the Planning Director

DECISION INFORMATION

Decision Date: September 22, 2011 Application File #: AD-1106

Applicant Name(s): Tidewater Contractors Inc.

APPELLANT INFORMATION

STANDING: I have standing because (check one):

I am the applicant or agent of the applicant

I participated in the decision orally at the hearing or with written testimony

I represent an agency that is affected by the decision and have standing through participation in the hearing process

Appellant Name(s):

- 1) Bob Manners, PO Box 1218, Gold Beach, OR 97444
(541) 247-0667
stormwatchercu30@yahoo.com
- 2) Wilbur & Bonnie Andreson, PO Box 732, Gold Beach, OR, 97444
(541) 247-2958
- 3) Steven & Linnez Zents, 95707 Jerry's Flat Road, Gold Beach, OR, 97444
(541) 247-0243
- 4) Curry Sportfishing Association, PO Box 1873, Gold Beach, OR, 97444
- 5) The City of Gold Beach, Jodi Fritts, City Administrator
29592 Ellensburg Ave. Gold Beach, OR, 97444

Attachment B-1

NOTE: An appeal of a decision will be heard by the appeals body specified in the relevant ordinance as a de novo (or entirely new) hearing. Appeals must be filed within the appeal period specified following the initial decision to be considered by the appeals body. The required fee, in currency or negotiable instrument must accompany this notice in order for it to be accepted as an appeal by the county.

ADDENDUM TO APPEAL NOTICE AD-1106

Appellants are parties of record having provided testimony during the Applicant's hearing before the Planning Commission. Comments before the planning commission form the basis for this appeal. Points of appeal include, but are not limited to, the following:

CCZO 2.140(5)(a)

The applicant has not carried its burden, which requires that the more drastic the change or the greater the impact of the proposal in an area, the greater is the burden on the proponent. Here, mining up to 60,000 cubic yards of gravel and sand is a drastic change, to say the least, and it will have an immense impact on ground water, aquatic habitat, land stability, and existing uses in the surrounding area. The applicant has not proffered the required data and analysis to meet this burden of proof.

CCZO 7.040(9)(a)(2)

The application does not contain sufficient information to review and set siting standards related to the impact of the proposed use on water quality, water flow, and fish habitat. The applicant has not provided sufficient information on ground water depth, trenching methods, and the potential for toxic contamination to review and set siting standards.

CCZO 7.040(9)(a)(3)

The application does not contain sufficient information to review and set siting standards on overall land stability, vegetation, wildlife habitat and land or soil erosion. The applicant has not provided sufficient information on trenching, as opposed to scalping, as it relates to soil erosion and land stability to review and set siting standards.

CCZO 7.040(9)(a)(5)

The application does not contain sufficient information on the rehabilitation of the land upon termination of the mining activity. The applicant has not provided sufficient information on trench mining, as opposed to scalp mining, to review and set standards

CCZO 7.040(9)(c)(1)

The application does not demonstrate that mining activity cannot be sited on an alternative site. The applicant has failed to disclose its gravel mining operations on the Chetco River, as well as other mining operations, and the applicant has failed to demonstrate why the Wedderburn site is not sufficient to act as an alternative site.

CCZO 7.040(9)(c)(2)

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The applicant has not sufficiently identified conflicting economic, social, environmental, and energy consequences and developed methods to resolve the conflict. The applicant has failed to demonstrate methods to resolve conflicts with the City of Gold Beach's water intake and surrounding residences.

CCZO 7.040(15)(b)

The application does not contain affirmative findings that the proposed use satisfies a need which cannot be met in another upland location.

Statewide Planning Goal 6: Air, Water, and Land Resources Quality

The application does not demonstrate that it will not violate applicable state or federal environmental quality statues, rules, and standards. The applicant has not demonstrated that it will not violate the Total Maximum Daily Loads for the Rogue River, and the applicant has not demonstrated that it has complied with all federal laws, including the Clean Water Act and the Endangered Species Act.

CCCP §§ 5, 6, 8

The applicant has not demonstrated compliance with the comprehensive plan goals because it has not demonstrated the benefit of aggregate extraction, has not demonstrated that it will not negatively impact water resources, and had not demonstrated that it will not conflict with residential development in the area.

DOGAMI OPERATING PERMIT AMENDMENT APPLICATION
FOR THE GBIP GRAVEL MINE, CURRY COUNTY, OREGON

Owner: Gold Beach Investment Properties
Agent: Tidewater Contractors, Inc.

Assessor Map: 3614-16, Tax Lot: 302
DOGAMI :ID #08-0100

ATTACHMENT I
(Revision 7/14/11)

**NARRATIVE SUMMARY OF THE
AMENDED OPERATING AND RECLAMATION PLAN**

1. Background

The following supplement presents a detailed description of the amended mine operation and reclamation plan for the GBIP Gravel Mine located on a portion of the old Gold Beach Plywood mill property near Gold Beach, Curry County, Oregon. The original operating permit for this mine was issued on September 1, 2010 and was based on a scalping mine operation. Due to unexpected overburden conditions encountered at the site during the first mining year, it was found that the operating plan originally proposed was not suitable for the site conditions encountered and did not allow for responsible recovery of the resource. This amendment modifies the operating plan so that the gravel resource present at the site may be more effectively utilized while still allowing the same plans for reclamation as previously proposed. This amended mine operation and reclamation plan is a part of the requirements spelled out in the Stipulation Order agreed to by DOGAMI and Tidewater on March 10, 2011.

2. General Setting

The permit area as approved in the original operating permit is confined to a 43 acre area in the southwestern corner of the parcel (Figure I-1). The entire parcel (T36S, R14W, Section 16, Tax Lot 302), within which the operating permit area lies, covers 152.45 acres and is split in two by Jerry's Flat Road. The portion of the parcel southeast of Jerry's Flat Road is the site of the old plywood mill where there are still remnants of the mill facilities and a large log pond remaining. The portion of the parcel northwest of Jerry's Flat Road was where gravel was mined in the past and some supporting facilities for the mill were sited. This mine permit applies only to the southern half of this portion.

The mine site is situated on a historic point bar deposit located near the inside bend of the Rogue River (Figure I-2), but above the ordinary high water mark. Adjacent to the mine site is a secondary channel of the river that has partially filled in recent years to where it is normally dry during the summer months. The main channel of the river is located farther to the north and west on the opposite side of the large bar known as Ferry Hole Bar. The head-of-tide is generally taken to be at about river mile five, which is located near the head of Ferry Hole Bar or approximately midway on the mine site. The lower portion of the site is within tidal influence but is adjacent to the secondary channel, which is dry in the summer months. Tidal fluctuations therefore do not impact the mine site except during the high flows or floods that occur during winter storms. The upper portion of the site is above the head-of-tide so is influenced only by the river, but this area is outside the DOGAMI operating permit area.

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The level to which normal high water flows of the river reach during a year is identified by the Ordinary High Water (OHW) line. The OHW line is defined as the upper limit on the shore to which the average spring runoff reaches on a two year cycle, not including flood events. In the field it is determined by physical evidence such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. One clear indicator is where the river gravel meets terrestrial grasses along the bank. For the original application, the OHW line was identified using these indicators. On May 5, 2011 the Corps of Engineers and Tidewater visited the site and reviewed the criteria used in the original determination. As a result, the location of the OHW line was revised based on evidence observed in the field during this site visit. This new OHW line is shown in Figure I-8 (orthophoto base) and Figure I-9 (Lidar base). The previous OHW line location shown in Figures I-1 and I-2 is no longer valid.

Winter freshets bring potential flooding to the area, which will inundate the mine area at least partially several times during the rainy season. Based on observed flood events at the site during the 2010-2011 rainy season, floods reached an elevation of about 15 to 18 feet which inundated most of the first year mining area. Observations and evidence at the site shows that the floods were slack water, rather than flowing water, and the level receded over a short period of time as the river dropped (Figure I-5). Extreme 100-year flood events are expected to inundate the whole area to an elevation of about 33 feet, which would be near Jerry's Flat Road.

The aggregate material contained on the site is typical of a point bar deposit. The coarser gravel is present at the upper end and central portion of the bar and grades to finer sand and gravel at the lower end of the bar where the actual mining will take place. The National Cooperative Soil Survey identifies the majority of the surface soil as riverwash except for a portion in the south that is classified as Gaudy-Willanch complex soil, consisting of silty loam overlying riverwash. Generally, soil development is thicker in the south end of the permit area where the Gaudy-Willanch soil complex has developed, but is very thin or non-existent in the northern part of the permit area where river wash dominates. The thickness of the Gaudy-Willanch soil complex overburden, as revealed in the 2010 mining, is generally less than two feet thick but locally may be up to three foot thick. As the mining progresses to the north, the overburden will become thinner and non-existent in places.

Vegetation on the river wash area is dominated by anis with secondary growth of shrubs, willows, and blackberries. Mining of this site will by necessity remove a portion of this habitat each year, but the mine plan presented herein provides for undisturbed areas to be left scattered through the mine area, which will continue to provide for wildlife winter forage and shelter even during the winter months following mining. At the same time, the mined out areas will provide for improved access and travel corridors for the wildlife and would soon be covered in grasses ideal for wildlife grazing. A few larger conifer

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trees occur in the far south end of the property near Jerry's Flat Road in an area of thick vegetation. These trees and the surrounding thick vegetation cover will be left intact as a natural vegetation area (Figure I-3) because of the maturity of this vegetation and the value it is to wildlife in the area.

3. Mine Plan Overview

The mine plans for this site were developed with reference to the guideline document "*Sediment Removal From Active Stream Channels in Oregon*", which was developed by the US Fish and Wildlife Service, National Marine Fisheries Service, US Army Corps of Engineers, and US Environmental Protection Agency (March 1, 2006). This document will be referred to herein as the Guidelines. Although this site is not a part of the active river system and is therefore not considered to be "in stream" mining, some of the techniques and issues addressed in the Guidelines can be effectively applied here.

Prior to the start of each year's mining, Tidewater will stake and flag the planned operating site, and will identify the leave areas that will remain as part of the reclamation plan for that year. Each year's mine plans will be reviewed with ODFW for their approval. This agency will approve the plans and production quantity prior to start of that year's mining. In addition to the yearly review, the overall project will be evaluated by ODFW after each year of mining. The review will be to assess the effectiveness of the mining method and operating plan employed, and the success and effectiveness of the reclamation. Changes to the plans may result from this evaluation.

The general plan for the mine operation includes pre-stripping of the overburden by pushing with a dozer or front-end loader, followed by the excavation of the sand and gravel resource from trenches and side-hill cuts using a tracked excavator or front-end loader. This was the mine plan that was followed during the 2010 mining and is illustrated in Figure I-4. The trenches will be excavated to a depth determined by the level of the ground water table at the time of excavation. All excavation will be done above the ground water table as located in the trench at the time of excavation. The static water level in the monitor well will be used as a reference to estimate where the level should be expected in the excavation. As the trench is being excavated, the first sign of standing water in the bottom of the trench will define the water level. Once this is identified, the operator can then reduce the depth so that the excavation will always remain above that level. Based on observations during the 2010 excavation, daily water level fluctuations were not noted until an unexpected early rain storm brought the level up, resulting in standing water within the trench. The intent is to not excavate below the top of the ground water table, but an early rain storm could bring the ground water level up, resulting in some standing water in the bottom of the excavation that has not yet been backfilled. It is the intent to minimize the possibility of this happening so every effort will be made to at least partially backfill the trench closely behind the excavation. Backfill material will consist of a mixture of overburden silt, sand and gravel that was removed from the excavation area prior to mining. The excavated material will be loaded directly into highway haul trucks for transport to Tidewater's Wedderburn facility on the

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north bank of the river. No permanent stockpiling of material will occur at the site, although there may be some small temporary surge or working stockpiles to aid in operation efficiency. The access road from Jerry's Flat Road to the mine site is show in Figure I-3. The use of this road where it accesses Jerry's Flat Road has been approved by the Curry County Road Master, Dan Crumley.

Mining was started at the south end of the permit area in 2010 and each year will proceed northward. The planned second year mine area is shown in Figure I-3. The overburden will first be stripped from the area using dozers, then a trench will be dug with a tracked excavator that loads the rock directly into highway trucks for transport to Wedderburn. As the trench develops, the dozer will then push the overburden and gravel mixture back into the trench with will compact the material in the process. The surface of the area will be composed of sand, silty soil, and gravel. The gravel will serve to armor the surface and stabilize it from any stormwater runoff that may occur during the rainy season. In the fall, the area will be seeded with grasses as needed to also help stabilize the surface. Any flood waters that encroach into the mine area will leave a layer of fine sediment material which will add to the soil base. The final slope of the mine area will be maintained to at least one-half to one percent towards the river. A stadia level survey will be run after the reclamation is complete to assure that this slope is maintained. This slope will assure that drainage will be directed out of the excavation area and also that as flood waters recede, fish will not become trapped in low areas.

During each year's excavation, randomly distributed and undisturbed leave areas throughout the mine area will be left in place. These leave areas will total ten percent (10%) or more of each years mine area and preserve growths of the existing vegetation. Additional artificial leave areas will also be built in random locations within the mined area. These artificial leave areas will be constructed with overburden material and will be planted with willows and grass as instructed by ODFW. Prior to commencing each years mining activity, Tidewater will meet with ODFW to determine and mark in the field where the leave areas will be. The leave areas will include existing live conifers and clumps of willows, which will provide stability for the leave areas during floods and will provide some immediate winter shelter and forage for wildlife in the area. Large woody debris or other natural features will be left in place to provide shelter for smaller wildlife and to help stabilize the leave areas during floods.

4. Timing of Mine Activity

Mine activities will only be carried out during short periods of time in the summer and fall seasons. No work will be done during the winter months when seasonal floods could inundate the mine area and jeopardize personnel and mining equipment working in the area. Because the mine site is located in an upland area, it is not subject to in-water work period restrictions that would be imposed if the site was situated below the OHW line. Actual work periods will be determined through consultation with the ODFW wildlife biologist so that disturbance to wildlife will be minimized. There is a wide variety of wildlife that utilizes this area, especially during the winter and spring months of the year.

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Of particular concern are the elk and deer winter range, deer fawning, elk calving, and bird nesting.

5. Mine Limits

As restricted by the Curry County conditional use permit AD-0910, mining is limited to the area of the property that is greater than 3500 feet from the Gold Beach water intake located past the eastern end of the parcel (Figure I-2). This restriction limits the area of mining to a 43-acre portion of the parcel at the far southwestern end. All mining will be restricted to the area of the parcel at least 50-feet from the permit boundary as shown in Figures I-2 and I-3. The permit boundary is placed at 3450 feet from the Gold Beach water intake. Adding the 50-foot set back from the permit boundary, the mining will be no closer than the 3500 feet specified in the county permit.

The western edge of the mine area is adjacent to the secondary channel of the river where mining will be limited by the OHW line. The trench excavation will start at a location that is no closer than 50 feet to the OHW line (Figures I-8 and I-9) or the property line, whichever is closer. In addition, a buffer of at least 75 feet will be left between the mine area and the closest riparian vegetation along the edge of the secondary channel, but generally this limit does not apply. Although trenching will be no closer than 50 feet, surface scalping may be done up to the OHW line. The reason for this is that leaving a 50-foot gap between the mining and OHW line will in some places leave a high berm which would create a confinement that could trap fish after flood events. By scalping to the OHW line, all obstructions will be removed.

The southern limit of the permit area is defined by the southern boundary of the parcel and the adjoinder's pasture, which encroaches into the parcel by about 175 feet. This edge will also have a minimum standoff of 50-feet (Figure I-3). The adjoinder's pasture will not be disturbed.

6. Mine Production

Production from this site will be limited by the Curry County conditional use permit. The previous permit allowed only 18,000 cubic yards (30,000 tons) of sand and gravel to be removed each year. Application is currently in the county to increase this allowed amount to 36,000 cubic yards (60,000 tons). The calculated reserves for the portion of the parcel where mining is allowed by the County permit is about 300,000 cubic yards. Actual recovery, however, will amount to only about 120,000 cubic yards with the remaining amount lost to the buffers, leave areas, and the natural vegetation area at the south end adjacent to the adjoinder's pasture. At the previously permitted 18,000 cubic-yards production each year, there are sufficient reserves to last about 6 years or more.

7. Reclamation Plans

Reclamation activities will be run concurrently with the mine development. As an area is mined, small undisturbed hills and ridges will be left in place and scattered around the mine area to form the final surface. These leave areas will total ten percent (10%) or

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more of each years mine area and have growths of the existing vegetation. The leave areas will include existing live conifers and clumps of willows, which will provide stability for the leave areas during floods and will provide some immediate winter shelter and forage for wildlife in the area. The small hills and ridges will generally be up to a few feet high and the vegetation will be undisturbed so that it will provide some winter protection and forage for wildlife. Logs and other woody debris will be left on the site to discourage erosion of the features during flooding and to provide additional protection for small wildlife.

The low mined out areas between the undisturbed hills and ridges will be left as a gravel surface and will provide open passageways for the movement of wildlife and for drainage of the area following winter floods. If the mine area is inundated during the winter floods, fine sediment will be naturally deposited on the gravel floor as the flood water recedes. In the following spring, these areas will be seeded as needed to stabilize the soil and to provide additional foraging for the wildlife. The areas will also be posted with signs to restrict access until the vegetation is well established.

The final surface of the mine area will appear similar to the final surface after the 2010 mining, as shown in Figure I-6. Cross sections through the final mine area are shown in Figure I-7.

8. Maintaining Public Access

This mining operation will in no way interfere with the public recreational access to the river. The county has a 60-foot wide access road easement through the central portion of the parcel from Jerry's Flat Road to the river's edge where there was once a ferry crossing (Figure I-1). This access road is outside of the mine permit area and will not be interrupted or restricted as a result of the mining activity. Additional unimproved roads through the area will be maintained and improved to maintain public access for recreational purposes. Roads will be provided through the mine area as needed for public access.

9. Storm Water and Flood Control Measures

As requested by DOGAMI, Tidewater has prepared a DEQ NPDES 1200-A General Stormwater Permit, which is being processed by DOGMAI and DEQ. As part of the requirements for this permit, a Storm Water Pollution Control Plan (SWPCP) has been developed. This plan details Tidewater's strategy to abide by DEQ standards for the control of storm water, including flood water. The objectives of the SWPCP are to:

- Identify the responsible person for implementing and complying with the SWPCP,
- Identify potential sources of pollution on the site,
- Identify storm water and flooding pathways,
- Identify procedures to handle the storm water and flood water runoff, and
- Identify inspection and monitoring procedures to assure compliance.

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Storm water control measures include Best Management Practices (BMPs) to eliminate or minimize any possible pollution from the site being carried to the Rogue River by storm or flood water. BMPs for storm water control may include vegetation replanting, contouring of final reclaimed surface, settling ponds, gravel check dams, and other measures that would control or prevent pollution from leaving the site. BMPs for flood water control may include the configuration and orientation of the excavation, vegetation replanting, and contouring of the final reclaimed surface. To assure compliance with the SWPCP, Tidewater will conduct site visits and monitoring of the property on a regular basis.

As stated earlier, it is expected that the average annual flooding level will inundate the mine area. The design of each year's excavated area will be such that the area will flood with slack water, rather than through flowing water that could result in channeling and erosion. The slack water will importantly provide a refuge for fish during these high velocity flood events. As the flood waters recede from the excavation area, the fish will also move back into the main part of the river. The slope of the excavation floor will assure that there will be no significant standing water that remains after the flood waters recede. During the 2010-2011 rainy season, flood waters reached to an elevation of about 15 to 18 feet which inundated most of the first year mining area. This was expected and evidence at the site after the water receded indicates that the flood waters were in fact slack water (Figure I-5). During major flood events that approach or reach the 100-year flood level of 33 feet, the entire area will be flooded to a level near Jerry's Flat Road. Even with such an event, because this area is away from the main river channel and on the inside edge of the river bend, the flood water here would be more slack water rather than high velocity flood waters.

10. Groundwater Monitoring Well

As part of the Stipulated Order agreed to by DOGAMI and Tidewater, a groundwater monitoring well will be installed in the mine area to identify if the mining activity causes any contaminates from the old mill site to migrate to the river. The location selected for the well (Figure I-3) is within the 2011 mining area and generally central to the permit area. The well will be installed prior to commencement of the next mining. It is anticipated that it will be dug to a depth of about 20 feet, based on the 7-foot depth to groundwater that was encountered in 2010. Well casing will be set in place to enable sampling of the groundwater. The casing will extend above the ground level and will be secured with a lock to prevent tampering. The water sampling and testing plan will include the following measurements and analytical tests:

- Measured depth to static water level
- pH
- Temperature
- PCB
- Oil and grease

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The static water level will be measured from the well collar with an electrical conductivity tester. During the mining activity, levels will be read daily to identify any short term fluctuations that may occur as a result of tidal fluctuations or other external influences. The remaining analytical tests will be done at least twice during each mining season. The first sampling session will be done before mining starts and will become the baseline. The next sampling session done directly following the completion of mining and will be compared with the baseline to identify any changes. Additional sampling may be required depending on the results from these two samples. The sampling will be done following US EPA Groundwater Well Sampling procedures detailed in their standard operating procedure (SOP) #2007 (Date 01/26/95, Rev #0.0). A bailer will be used to sample the well and prior to taking the sample, at least three well volumes will be purged from the well. Proper procedures will be followed to assure that a representative sample is taken and is free from contamination. The sample will then be immediately transported to the water analysis laboratory. The lab will be selected from the Oregon Environmental Laboratory Accreditation Program (ORELAP) list and will be selected based on proximity for timely delivery and analysis of the samples.

Attachment I Figures

- Figure I-1 Proposed Removal Area Site Map (by Stuntzner Engineering & Forestry, LLC)
- Figure I-2 GBIP Gravel Mine Site Orthophoto (2005)
- Figure I-3 GBIP Gravel Mine Permit Area
- Figure I-4 Photographs of 2010 Mine Area During Mining
- Figure I-5 Photographs of 2010 Mine Area After Flooding
- Figure I-6 Topographic survey of final surface – 2010 mine year
- Figure I-7 Cross sections through 2010 mine year
- Figure I-8 OHW Line on 2009 Orthophoto
- Figure I-9 OHW Line on Ground Lidar

TIDEWATER CONTRACTORS, INC.

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Dave Baldwin Jess Fitzhugh

CCB # 29995 CCLB# 456696



September 15, 2011

David Pratt, Planning Director
Curry County Public Services
PO Box 746
94235 Moore St
Gold Beach, OR 97444

RE: Final Arguments for the GBIP Gravel Mine application, AD-1106

Dear Mr. Pratt,

On behalf of Tidewater, I would like to submit to the Curry County Planning Commission the following final arguments in support of the GBIP Gravel Mine application, AD-1106.

The decision before the Planning Commission is one to allow Tidewater to continue mining on a portion of the old mill site property, or to not allow the plan to go forward and to deny recovery of a valuable natural resource that the county needs so desperately. This site is a Goal 5 Natural Resource site and as such should be preserved for that purpose. Already, most of the Goal 5 gravel resources that were available in the county have been denied access for various reasons, thereby making it more and more difficult to supply high quality construction aggregate for rebuilding our roads and for other construction activities. For the economic health of our county, we need to continue to have access to river gravels to obtain high quality aggregate materials to manufacture asphalt and concrete products for construction. It is a fact that upland quarries can't effectively supply this need because of quality requirements.

As explained in the extraction plan, the sand and gravel will be mined from trench excavations, dug to the top of ground water. A ground water monitoring well will be installed on the property prior to mining to take samples for analysis and to help predict the depth to ground water as the mining progresses. Soon after excavation, the trench will be backfilled with overburden material that was removed prior to excavation. The final configuration of the area will be a flat surface sloping gently towards the river. As part of the reclamation plan, leave islands will be left in place as well as others will be constructed around the property. Also, willow stakes will be planted in the trenches during backfill to help fill in the area with vegetation. The mining and reclamation work will be coordinated with ODFW and Curry County Planning Department.

The extraction plan put forth by Tidewater is a sound and effective plan for obtaining the resource as well as to improve the site for wildlife habitat. Steve Mazur of ODFW commented during a site visit how ideal this site is for gravel mining because it is not in the active river and the area can be reclaimed to a beneficial wildlife habitat. The final proposed reclaimed area will provide for slack water refuge for

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Attachment E-1

fish during floods, island refuge for water animals during floods, and forage for deer and elk during the spring and summer. As the vegetation fills in, the area will provide increased forage and shelter areas for birds and animals. Currently, there are depressions in the area that are effective traps for fish as flood waters recede. The mining and reclamation work will result in the removal of those traps that are currently above the Ordinary High Water (OHW) Line.

At the August 18, 2011 Planning Commission hearing and in subsequent document submitted for record, local residents and special-interest groups expressed concerns for impacts from the mine operation and for violations Tidewater received following the 2010 mining at the site. The most significant impacts described include dust from the operation, possible contamination from the old mill site, and potential adverse impact to the Gold Beach and Nesika Beach water supplies. During the 2010 operation we watered the access road to keep down the dust and the sand and gravel material being mined were naturally moist and did not produce any dust. We will again watch for sources of dust and make every effort to reduce as much as possible or eliminate it. As agreed to with DOGAMI, Tidewater will install a ground water monitoring well in the mine area and take samples for analysis. The well will be monitored before, during and after mining to identify any changes that could result from the mining activity. However, we do not expect to see any changes because all mining will be above the ground water so there will be no impact on the ground water. Also, all mining will be far removed from the drainage creek that flows from the mill site and crosses the southeastern corner of the property. Samples taken from the creek showed no oil and grease present, as was claimed by one respondent. As a condition in the previous CUP (AD-0910), mining will be no closer than 3500 feet from the Gold Beach water intake, which is a condition also included in this application. This set off was determined by the Planning Commission with assumed agreement from the City of Gold Beach and agreed to by Tidewater. Now it appears that the City of Gold Beach does not want anything done on this property. Their apparent concern is that the mining will in some way have a detrimental effect on the water quality at the intake, which is over 3500 feet upriver from the closest mining. Their concerns have no basis in fact. The violations Tidewater received in 2010 were a result of several unfortunate events and misinformation provided to Tidewater by a DOGAMI representative. Also, the state and county agencies were notified at the time that Tidewater would be mining below the final grade because of unexpected conditions encountered, and no objections were raised until they received pressure from outside groups. Although Tidewater has accepted full responsibility for these violations, DOGAMI has also accepted partial blame for the misunderstandings and has consequently withdrawn all three violations/orders.

One of the groups objecting to the project was ORCA which submitted two letters covering several issues. They stated in their August 16 letter that Tidewater has not received any confirmation of jurisdiction from DSL or the COE. As documented in the record, the COE has agreed to the OHW line and non-jurisdiction for at least the year 1 and 2 mine areas. Their determination for the rest of the mine area is still pending but should be cleared soon. Tidewater will not be able to mine past the year 1 and 2 areas without COE determination of non-jurisdiction or where they have jurisdiction within the mine area. DSL has also agreed to the OHW line and consequently has issued a non-jurisdiction call for the mine area. Since this is an upland area (above the OHW line) as determined by these jurisdiction determination studies, the area clearly falls under DOGAMI jurisdiction. Claiming anything else is not based on fact and is intended only to mislead.

Tidewater does not yet have the DEQ NPDES 1200-A storm water permit that was originally applied for in March 2010. The application has been approved by DOGAMI and DEQ, but because this is a new application for a CUP, a new LUCS is required. Once the AD-1106 is approved by the Planning

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Commission, the LUCS can be completed and sent to DOGAMI. The application would then be released for the 14-day public review period. The approved permit may then be issued following the review period and baring no serious deficiencies that need to be corrected.

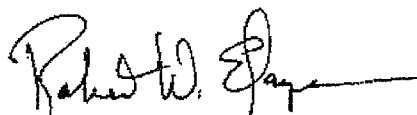
ORCA also claims that Tidewater is required to obtain a 404 Dredge and Fill Permit for the trench excavation because the backfill may be considered to be 'discharge of dredged material' into the ground water system. Such discharge would normally trigger COE jurisdiction based on the Clean Water Act (CWA) if the discharge was in the "Waters of the United States". They further state that *Groundwater includes "waters of the United States"*. This statement is incorrect and their whole argument is totally misleading and meant to confuse. The term "Waters of the United States" is clearly defined by the CWA as including surface waters in territorial seas, tidal waters, and non-tidal waters. A more detailed definition can be found in 33 CFR PART 328 and it does not include ground water. Underground water is mentioned in the CWA in connection with surface water, but the act does not regulate ground water. There is currently a revision to the definition of "Waters of the United States" waiting for final approval, but even this new definition does not include the regulation of ground water.

Unfortunately, this final argument is longer than I anticipated, but I felt that these issues and accusations are unjust with no basis of fact and need to be refuted in more detail. In summary, I would like to restate our basic requests for this CUP. We are asking the county for the following conditions in the permit.

- Extract 30,000 to 60,000 tons per year from the property.
- Excavate trenches down to ground water and backfill with overburden to the final grade.
- Permit term of three (3) years.
- Allow scalp mining up to the OHW line to remove any topographic obstructions that could result in fish entrapment.

I hope that we will receive a favorable decision from the Commissioners.

Sincerely,



Robert Elayer
Tidewater Contractors, Inc.